86-109

No.

Supreme Court, U.S.
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# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
*Appellants,*

VS.

THE COUNTY OF SANTA CRUZ and
THE CALIFORNIA COASTAL COMMISSION,
*Appellees.*

## JURISDICTIONAL STATEMENT

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89PP

## QUESTIONS PRESENTED

1. Is a Land Conservation contract (specifically authorized by state statute to preserve agriculture) between a political subdivision of the State of California and a farmer protected under the Contract Clause from subsequently adopted land use regulations that nullify the terms of the previously executed and relied upon contract and representations of the public entity?

2. Are the terms of this Land Conservation contract, including land uses permitted as a matter of right thereunder, protected by the Contract Clause and Just Compensation (Taking) Clause or are the same an attempt to improperly restrict the future exercise of the police power?

3. Has the conduct of the public agencies violated the rights of the land owner under the Contract, Taking, Due Process, and Equal Protection Clauses of the United States Constitution as well as the Federal Civil Rights Act?

4. Does the United States Constitution protect this land owner since, to the substantial irreversible detriment, the farmer was induced to enter into the Land Conservation contract by the County's representation that the then existing zoning, including the text therein and the permitted uses, would remain the same and in effect during the life of this Contract?

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*Appellees.*

## JURISDICTIONAL STATEMENT

## I
## PARTIES

The parties to this Appeal are Andrew and Dorothy G. S. Delucchi, the Appellants and landowner. The Appellees are the County of Santa Cruz, a legal subdivision of the state of California, and the California Coastal Commission, created by statute. Article XI, Section 1(a) of the California Constitution; Sections 30,000 et seq. of the California Public Resources Code.

## II
## OPINIONS BELOW

### 1. Trial Court Judgment

After a two day court trial, the Superior Court filed a Statement of Decision and a Judgment. Inter alia, the trial court determined that:

A. "Most land owners would have significant reluctance to sign any long term contract, such as a Williamson Act (Land Conservation Act) Contract, unless he/she was assured that the land use regulations during the term of the contract would remain the same. Among other items, the land owner cannot weigh the various considerations in a Williamson Act (Land Conservation Act) Contract unless the zoning, zoning regulations, and text including the permitted uses thereunder remain the same and are known during the life of the proposed contract." Appendix B, A-14.

B. "The original contract between the County and the landowner provided and it was intended that there be the land uses as set forth in the Agricultural Preserve District regulation and text existent at the time of the contract as part of the contract. Among other items, to eliminate those land uses, as a matter of right, constitutes a breach of the contract between county and landowner." Appendix B, A-16.

C. "... the Contract Clause of both the United States Constitution and the State Constitution is not a dead letter and it does impose limits upon the power of the Defendants to impair the existing contractual relationships between the County and the land owner... the contract are (is) not invalid as an unlawful delegation of the police power.... the policy to preserve agricultural lands and encourage landowners to enter Williamson Act (Land Conservation Act) contracts out weighs the policy against contracting away police powers. Appendix B, A-14.

Both the County of Santa Cruz (hereinafter referred to as County) and the California Coastal Commission (hereinafter referred to as Coastal Commission) appealed the Judgment of the trial court and the landowners cross-appealed portions of the trial court Judgement.

**2. Opinion of the California Court of Appeal**

The Opinion of the California Court of Appeal was reported at 179 Cal.App.3rd 814, 225 Cal.Rptr. 43. A copy of that Opinion is Appendix C, A 26-39. Inter alia, the Court of Appeal ruled that "a government 'may not contract away its right to exercise the

police power in the future' "; thereby effectively nullifying the contract, the representations made as inducement to the landowner to enter the contract, and the purpose of the Land Conservation Act of 1965. Appendix C, A-34. In ruling against the Delucchis, the Court of Appeal cited California cases dating from 1927 through 1976. The absurdity of this ruling is that the public agency can enforce its contracts; yet the private individual cannot since, unrestrictively, "a government may not contract away its rights to exercise the police power in the future" according to the California courts. If left standing, this ruling will bring not only the agriculture industry but also other veins of nationwide commerce to a standstill. Appendix C, A-34.

**3. Judgment**

The Opinion of the Court of Appeal was not final until after a Petition for Rehearing was timely filed and denied (A-40) and a timely Petition for Review by the California Supreme Court was timely filed and, eventually, denied on June 18, 1986. Appendix E, A-41; 28 U.S.C. Section 1957; *Banks v. State of California*, (1969) 395 U.S. 708. A Notice of Appeal was filed on July 9, 1986. Appendix I, A 61-62.

## III
## CONCISE STATEMENT OF JURISDICTION

This is an Appeal from a "final judgment" of the highest court of a state" as required by 28 U.S.C. Section 1257. Delucchis sought protection and relief under the United States Constitution including, inter alia, the Contract, Substantive Due Process, Taking, and Equal Protection Clauses of the United States Constitution and, also, the Civil Rights Act, 42 U.S.C. Sections 1983 and 1988. This includes a request for reimbursement of attorney's fees and other costs incurred. Further, the landowner has sought relief directly under the federal Constitution. *Bivens v. Six Unknown Named Agents*, (1971) 403 U.S. 388.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257 (2) and (3) and each subsection. Cases sustaining the jurisdiction of the United States Supreme Court on appeal to review the State Court Judgment concerning matters of this

nature include: *Pennsylvania Central Transportation Co. v. City of New York*, (1978) 438 U.S. 104; *Moore v. City of East Cleveland*, (1977) 431 U.S. 494; *Pennsylvania Coal Co. v. Mahon*, (1922) 260 U.S. 393.

Delucchis also Petition this Court to invoke its jurisdiction by Writ of Certiorari pursuant to 28 U.S.C. Section 1257 (3) and request that this Jurisdictional Statement be regarded and acted upon as a Petition for Writ of Certiorari in accordance with 28 U.S.C. Section 2103. See also *Kulko v. Superior Court of California*, (Cal. 1978) 436 U.S. 84; *Richmond Newspapers v. Virginia*, (1980) 448 U.S. 555, 563-564.

## IV
## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**1. Article I, Section 10, United States Constitution**

"No State shall . . . pass any . . . ex post facto law, or law impairing the obligation of contracts . . . "

**2. Fifth Amendment, United States Constitution**

"No person shall . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**3. Ninth Amendment, United States Constitution**

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

**4. Fourteenth Amendment, United States Constitution**

"No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

**5. 42 U.S.C. Section 1983**

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subject, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other property proceeding for redress."

**6. Section 51,200 et seq. of the California Government Code including Section 51251**

"The county, city or landowner may bring any action in court necessary to enforce any (Land Conservation Act) contract . . ."

**7. Pertinent County ordinances are reproduced in the Appendix**

## V
## RAISING THE FEDERAL QUESTION

At the administrative level, in the legal pleadings filed, in the trial briefs of Delucchis, in the appellate briefs of Delucchis, in the Petition for Rehearing to the Court of Appeal, and in the Petition for Review by the California Supreme Court, the Delucchis have raised all the federal questions including, inter alia, the violation of the Contract, Taking, Due Process, and Equal Protection Clauses of the United States Constitution. See also Appendix B, A-12.

## VI
## STATEMENT OF THE CASE

**1. There Is the Statewide and Nationwide Need to Further and Preserve the Agricultural Industry**

According to the United States Department of Commerce, Bureau of the Census, the State of California was the number one (1) farming state in the Nation in 1984. See *No. 1172, Crops-Acreage and Value, 1982 to 1984, and Order of Value, 1984, by*

*State; Statistical Abstract of the United States, 1986; U.S. Department of Commerce, 106th Ed., Page 658.* Further, "California led the Nation in gross cash from farm receipts in 1982 for the 35th consecutive year. An estimated $14.3 billion was paid to the State's farmers in 1982 for 51.8 million tons of farm products." *California Agriculture Summary, prepared by the California Department of Food & Agriculture, 1982, page 1.* Moreover, "California is the world leader in food production, the most productive agriculture region on earth. The Golden State provides 25 percent of the food consumed in the United States." *Publication of California Farm Bureau Federation entitled "Number One Farm State".*

The agriculture industry is a vital industry to the United States and the State of California produces a substantial, disproportionate amount of the national agriculture revenues. In an attempt to further the agriculture industry and to preserve agricultural land, the California State Legislature enacted the Williamson Act, also known as the California Land Conservation Act of 1965. *California Government Code Section 51200.* Hereinafter, the Act will be referred to as the Land Conservation Act. Under the Act, counties are authorized to establish Agricultural Preserves zones (Government Code Section 51230) and, further, are empowered to enter into contracts regulating the land use for a minimum of ten years. *California Government Code Sections 51240, 51242, 51244.* Furthermore, the Land Conservation Act contracts and the terms thereof shall be terminated or modified *only* as specifically authorized by the Act. Section 51244 of the California Government Code (ten year prior notice of termination); Section 51254 ("the parties may upon their *mutual* agreement" rescind); Section 51253 (amendment of law by the State Legislature provided that there is a "*mutual* agreement of all parties"); Sections 51280 et seq. (petition to county by landowner provided certain conditions exist). (Emphasis added) Also, the State Legislature saw fit to authorize the landowner to bring "any action necessary to enforce any contract, including but not limited to, an action to enforce the contract by specific performance or injunction." *Section 51251 of the California Government Code.* Clearly, the State Legislature found that the preservation of

agricultural land and food production are not only of state wide significance but are of major significance to the Nation.

> "The Legislature finds:
>
> (a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance adequate, healthful and nutritious foods for future residents of this state and Nation." *Section 51220 (a) of the California Government Code.*

Other states of this Nation have also demonstrated a concern for the preservation of the agriculture industry.

After the County and Coastal Commission appealed to the California Court of Appeal, the California Farm Bureau Federation, with permission of the Court, filed an amicus curiae brief. Furthermore, the California Farm Bureau Federation filed a letter brief with the California Supreme Court supporting the Petition for Review of the Delucchis and stated inter alia:

> The California Farm Bureau Federation, which appeared as Amicus Curiae in this matter before the Court of Appeals for the Sixth Appellate District, wishes hereby to express its support for the Petition For Review submitted to this Court by Andrew and Dorothy G.S. Delucchi.
>
> The California Farm Bureau Federation ("Farm Bureau") is a voluntary, non-governmental, non-profit California corporation, representing nearly 100,000 member farm families in 56 counties. Its primary purpose is to protect and foster agricultural interests throughout California.
>
> The County of Santa Cruz, defendant, appellant and cross-respondent in this matter, asserts in its Answer to Petition for Review that "this case does not present important statutory and constitutional questions of statewide importance." To the contrary, Farm Bureau strongly believes that the decision of the Sixth District Court of Appeals has announced principles of general applicability concerning the mutuality of rights and obligations created under a Williamson act con-

tract, and will have an impact upon present and future Williamson Act contracts throughout the State of California.

On behalf of its members statewide, the California Farm Bureau Federation therefore expresses its strong concern and its support for the Petition for Review submitted by plaintiffs, respondents and appellants Andrew and Dorothy Delucchi. If review is granted, Farm Bureau will seek permission to file an Amicus Curiae Brief addressing those issues it believes will have a direct and serious impact upon its members. Appendix F, A 42-43.

**2. Delucchi Property**

The Delucchi property contains approximately 163 acres. It has been in the family since 1903 and is near the small community of La Selva Beach in Santa Cruz County, California. Santa Cruz County, is, generally, rectangular in shape and borders, in part, the Bay of Monterey. The Bay of Monterey is approximately 100 miles south of San Francisco, California.

Because of the inland location of the Delucchi property, it was *not* in the permit jurisdiction of the Coastal Commission, as that Commission was established in January, 1973. The initial Coastal Act was to expire December 31, 1976 in the event that the State Legislature did not adopt any subsequent Legislation. Nevertheless, in late December 1976, the State Legislature did adopt the Coastal Act of 1976. The provisions of the California Coastal Act of 1976 can be found at Sections 30,000, et seq. of the California Public Resources Code. Under the 1976 Coastal Act, the jurisdiction of the Coastal Commission was extended inland greatly; indeed, miles inland in various areas. As a result, the Delucchi property is now within the so called boundary of the Coastal Commission.

**3. The Delucchi Land Conservation Contract with the County of Santa Cruz**

Article XI, Section 1 of the California Constitution, declares, in part: "The State is divided into counties which are legal subdivisions of the State." In furtherance of the declared state purpose to preserve agricultural land uses and further the agricul-

tural industry, the state authorized counties to enter into contracts pursuant to the Land Conservation Act of 1965. Pursuant to that State legislation, the County specifically enacted the Agricultural Preserve Zone District, Ordinance No. 1283, adopted on January 2, 1968. See Ordinance No. 1283 attached to the lower court Judgment, Appendix A, A 4-7.

The Agricultural Preserve District, (A-P) Zone Ordinance No. 1283, sets forth its purpose; ". . . the regulations are designed to apply to agricultural lands . . . within an agricultural preserve established in accordance with the provisions of the CALIFORNIA LAND CONSERVATION ACT of 1965 . . ." Appendix A, A-4.

The A-P Zone in effect at the time that this contract was executed authorized a single-family dwelling for each ten acres of total site area as *permitted* uses, i.e. non-discretionary use, as a matter of right. Except for a few specified conditional uses, "all" agricultural uses, including "accessory buildings," were similarly designated as permitted uses for which it was *not* necessary to obtain a discretionary permit. Greenhouses were *not* specified as conditional uses. Greenhouses are a historical agricultural use in Santa Cruz County. Appendix A, A-7; A 9-10.

For approximately three (3) years prior to entering this Land Conservation Act contract with the County, Delucchis had many meetings with various County officials including the County Planning Director and Assessor. Although the tax phase was gone into by the Delucchis with the County officials, the most important aspect to the Delucchis was the land uses. There were specific discussions with the County officials wherein the Delucchis were assured they could use, as a matter of right, the land for, inter alia, family homes and greenhouses as a part of the contract. No discretionary application or permit was required. Appendix A, A 4-7; A 9-10. (Also in Reporter's Transcript, R.T., Pages 23-29, 42)

Prior to the execution of this Williamson Act contract, promises, representations, and inducements were made by the County officials to the Delucchis whereby, inter alia, the then Agricultural Preserve Zone District regulations and text thereof,

would remain unchanged and would not be modified or eliminated during the life of this contract. The Delucchis, to their substantial detriment, reasonably and irreversibly relied upon these promises, inducements, and representations so as to change their position and enter into this contract with the County. Had these assurances, representations, and inducements not been made to the Delucchis, they would never have entered into this contract and, further, would not have even considered entering into such a contract. Moreover, had the assured land uses merely been *"possible"* land uses because of a requirement to apply for a discretionary permit, the Delucchis would never have entered into this contract. Appendix B, A 9-10; A 15-16. (Also in R.T. Pages 69, 27, and 47.)

This Land Conservation Act contract drafted by the County was eventually signed by Delucchis in February, 1971, and the A-P Zone is part of it. The contract specifically refers to the Agricultural Preserve (A-P) Zone District five (5) times and required that the land be rezoned to A-P, which it was. Prior to the contract, the land use General Plan adopted by the County for this land called for relatively intense residential-golf course development of the subject property. After the contract was executed, the land was rezoned to A-P and the General Plan was amended whereby those land uses were eliminated. Failure by the court to protect the rights of the Delucchis would damage them in excess of two million ($2,000,000) dollars. Appendix B, A 9-13. (Also in R.T., Pages 58-84-85.)

As accurately pointed out by the trial court:

> If the County is allowed to change the permitted land use after the execution of the Williamson Act Contracts without the consent of the landowner, this will have substantial, adverse affect on this State legislation in that landowners, generally, just will be reluctant to enter into these contracts so as to bind themselves, but leave the counties free to change the permitted land uses. Appendix B. A-12.

**4. Local Coastal Plan**

As a result of the California Coastal Act of 1976, the Delucchi property was included in the boundaries of the California Coastal

Commission which, depending on the precise location, extends far inland from the coastline of Santa Cruz with the Bay of Monterey. As part of the California Coastal Act of 1976, the County was to prepare a Local Coastal Plan (LCP) and the California Coastal Commission was to review it and approve it, which, in this case, was eventually done.

During this process, the County Planning staff proposed to the County Planning Commission that the properties under this type of Land Conservation Act contract be rezoned from the 1968 Agricultural Preserve (AP), to a CA District (Commercial Agricultural) and eliminate, all together, the AP Zone district, itself. Appendix B, A-11. The Commercial-Agricultural Zone (CA) is highly restrictive and has, generally, no permitted uses as a matter of right, with respect to lands such as this that are located in the Coastal Zone. For example, even one residence on a parcel of any size in the Coastal Zone is discretionary. The Delucchis objected to the staff recommendation. Appendix B, A 11-12.

Contrary to the staff recommendation, the Santa Cruz County Planning Commission recommended to the Board of Supervisors that the subject property remain in the Agricultural Preserve Zone, *and* that the *text* of the A-P Zone, pursuant to Ordinance No. 1283 adopted in 1968, remain intact, as it had for over a decade. Thus, as part of the implementation of the Local Coastal Plan (LCP), the Planning Commission clearly affirmed that the AP Zone, as originally adopted in 1968 including the text thereof, should remain. Appendix B, A-11.

Thereafter, over the objections of the Delucchis and the Santa Cruz County Farm Bureau and contrary to the recommendations of its own Planning Commission, the Board of Supervisors completely rewrote and drastically changed the text of the A-P zone so that the A-P zone is almost identical to the extremely restrict Commercial-Agricultural Zoane (CA). Appendix B, A 11-12.

All of the "permitted uses", as a matter of right for which no use permit was necessary including those guaranteed and promised to the Delucchis prior to the execution of the Land Conservation Act contract as inducement to enter the same, were

eliminated. This included the elimination of family homes and greenhouses as permitted uses. Appendix B, A 11-12; Appendix A, A 4-7; Appendix A, A 48-60.

The California Coastal Commission, over objection of Delucchis, approved the action of the County. Subsequently, Delucchis filed litigation against the County and the Coastal Commission in Superior Court of the State of California for the County of Santa Cruz. As mentioned previously, there was a two day court trial after which the court entered a Statement of Decision (Appendix A) and a Judgment (Appendix B).

## VII
## THE QUESTIONS PRESENTED ARE SUBSTANTIAL AND REQUIRE CONSIDERATION OF THE UNITED STATES SUPREME COURT

### 1. The Enforcement of the Contract Clause to Protect the Appellants and This Land Conservation Act Contract Is of Nationwide Significance

As previously pointed out, California is the most productive state from an agricultural standpoint. The declaration by the State Legislature merely acknowledges that farming products from California feed a vast array of people; statewide, nationally, and internationally. The Land Conservation Act of 1965 was adopted, inter alia, to preserve and promote this vitally needed industry. *Section 51220 (a) of the California Government.* Clearly, in order to preserve and further the agriculture industry and encourage landowners/farmers to enter into such contracts, the farmers/landowners must necessarily know the permitted land uses by which the land will be bound during the term of the contract. Obviously, the land uses during the term of the contracts are a vital concern to any farmers and, in this case, to the Delucchis, in particular. Appendix B, A-12 (R.T. 22-29, 41-49 & 87). This was clearly affirmed by the trier of fact in the lower court decision.

> "If the County is allowed to change the permitted land use after the execution of the Williamson Act Contracts (Land Conservation Act Contracts) without the consent of the landowner, this will have substantial, adverse affect on this

> State legislation in that landowners, generally, just will be reluctant to enter into these contracts so as to bind themselves but leave the counties free to change the permitted land uses. . . . among other items, the landowner cannot weigh the various considerations in a Williamson Act Contract (Land Conservation Act Contract) unless the zoning, zoning regulations, and the text including the permitted uses thereunder, remain the same and are known during the life of the proposed contract." Appendix B, A-12, A-14.

Thus, the very purpose of State Legislation not only in California but in other states attempting to promote and preserve agricultural lands and industry, will be seriously obfuscated if not effectively nullified. This is further highlighted by the California Farm Bureau Federation acknowledgement that this published Decision, if left standing, would have a serious, statewide impact on the farmers of California and the agriculture industry in general. Appendix F, A 42-43.

As originally intended by the Founders of the United States Constitution, the Contract Clause ". . . was perhaps the strongest single constitutional check on State legislation . . . " *Allied Structural Steel Co. v. Spannaus*, (1978) 438 U.S. 234, 241, 98 S. Ct. 2716. Furthermore, this Court has clearly determined that:

> "If the Contract Clause is to retain any meaning at all, however, it must be understood to impose SOME limits upon the power of a State to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power." *Allied Structural Steel Co. v. Spannaus*, (1978) supra. (emphasis in original)

This is particularly significant here in that the Delucchis received certain promises, representations and assurances in order to induce them to enter into this contract with a legal subdivision of the State of California and in furtherance of an avowed public policy to preserve and further the agriculture industry. A strict standard is to be applied against the public agencies not only under state statutory law, since the County drafted this contract, but also under constitutional law. *Sections 1635 and 1654 of the California Civil Code; Energy Reserves Group v. Kansas Power &*

*Light Co.*, (1983) 459 U.S. 400, 412, 103 S. Ct. 697. Not only are public agencies bound by their contracts, but also they cannot impair the obligation of contract. The Legislature is without power to impair or destroy the obligations of contractual or vested rights. *Article I, Section 10, United States Constitution*; *Allied Structural Steel Co. v. Spannaus*, (1978) supra; *Estate of Thramm*, (1947) 80 CA2d 756, 765, 183 P.2d 97.

Further, the Decision of the California Court of Appeal clearly violates, in addition to the Contract Clause, the Fifth and the Fourteenth Amendment-substantive due process and equal protection. The Delucchis' are entitled under constitutional law to receive fundamental fairness, which they have not.

> The Fifth Amendment expresses a principle of fairness and not a technical rule of procedure . . . *United States v. Dickson*, (1947) 331 U.S. 745, 748.

Substantive due process required that the right to family homes and greenhouses be protected against subsequently adopted legislation. Further, no discretionary "permit process" can be required in that it, inter alia, would destroy that which was promised, represented, and bargained for. These constitutional law rights should, indeed, include the doctrine of estoppel. The Constitution further protects the implied covenants of good faith and fair dealing owing by the agencies to Delucchis.

> "In every contract there is an implied covenant of good faith & fair dealing . . . " *Brown v. Superior Court*, (1949) 34 C2d 559, 564, 212 P.2d 878; Article I, Section 10 United States Constitution.

**2. California Has Chosen to Affectively Nullify the Taking Clause Under the Guise of the Police Power and This Court's Attention Is Needed to End This Anarchy Which Has Had Nationwide Impact**

The Taking Clause protects intangible assets such as rights secured by contract and the contract, itself, and the same cannot be taken without the payment of just compensation. *Lynch v. Household Finance Corp.*, (1972) 405 U.S. 538, 552; *Armstrong v. U.S.*, (1960) 364 U.S. 40; *City of Oakland v. Oakland Raiders*,

(1982) 32 Cal.3d 60,69 (franchise rights); *Liggett and Meyers v. U.S.*, (1927) 274 U.S. 215, 220 (contract to provide tobacco products); *Porter v. U.S.* (5th Cir. 1973) 473 F.2d 1329 1333-1335 (right to exploit collector's value); *City of North Sacramento v. Citizens Utilities Co.*, (1961) 192 Cal.App.2d 482 (contract right to do business.) The Delucchis and this Land Conservation Act contract are protected by the Taking Clause.

Moreover, property rights protected under the Taking Clause are clearly in jeopardy in California. This fact is well known and has recently been acknowledged by a Justice of the California Supreme Court.

> "I confess to a growing unease about what I view as an accelerating erosion of private property rights of California citizens. . . . Pursuant to the Fifth Amendment to the Federal Constitution and Article I, Section 19, of the California Constitution, let state and city pursue established legal procedures to condemn the property in question, rather than upset long-established principles in order to obtain the property 'on the cheap as it were' ". *City of Venice v. Venice Peninsula Properties*, (1982) 31 Cal.3d 288, 316, 182 Cal.Rptr. 599, 616. (Dissenting Opinion)

Furthermore, this Court has clearly expressed its view on the importance of protecting private property rights and that the so called dichotomy between personal liberties and property rights is a false one. *Lynch v. Household Finance*, (1972) 405 U.S. 538, 552. Such rights are, also, protected under the federal Civil Rights Act. *42 U.S.C. Sections 1983, et seq.*

### 3. There Has Been a Reoccurring Conflict in Principles Between the Highest Court in California and the United States Supreme Court

As previously mentioned, this Court has reaffirmed that the Contract Clause is not a dead letter and is a restriction upon a State, even in the exercise of its otherwise legitimate police power. *Allied Structural Steel Co. v. Spannaus*, (1978) supra; *Energy Reserves Group v. Kansas Power & Light Co.*, (1983) supra. Nevertheless, California, in particular the California Supreme Court, has blithely disposed of the Contract Clause by

repeatedly ignoring it and asserting that the unwritten, amorphous police power knows no restraints nor restrictions. See e.g., *Avco Community Developers, Inc. v. South Coast Regional Commission,* (1976) 17 C3d 785, 800, 553 P2d 546, Appeal dismissed 429 U.S. 1083; *Acker v. Baldwin,* (1941) 18 C2d 341, 345, 115 P.2d 455; *Mott v. Cline,* (1927) 200 C. 434, 446, 253 P. 718. The Decision of the California Court of Appeal in Delucchi merely parrots the California Supreme Court and specifically quotes the Avco case. Appendix C, A-34.

This Land Conservation Act contract was executed by the County, not as a parochial matter, but rather in furtherance of the mandates of the Land Conservation Act of 1965, itself, and declared State policy. *Article XI, Section 1 of the California Constitution; Board of Education v. Martin,* (1981) 92 Cal. 209, 215. As such, the State Coastal Commission as well as the County are bound by the previously executed and relied upon Land Conservation Act contract. Further, Appellees cannot properly impose a subsequent discretionary process for that previously relied upon to the substantial and irreversible detriment of the landowners, especially in view of the unrefuted representations and assurances made by the County officials as inducement to Delucchis.

Furthermore, by this Land Conservation Act contract, there is *no* improper delegation of the police power *in furtherance of* the declared State policy to encourage and support agriculture. *Government Code Sections 51,200, et seq.* The very purpose of the Land Conservation Act legislation would be undercut if the agencies were allowed to change the land uses permitted as a matter of right, after the execution of a Land Conservation Act contract and without the consent of the landowner in that landowners just will not enter into these contracts as to bind themselves and yet leave the agencies free to change the land uses. Appendix B, A-12; A-14.

Moreover, the Decision has confused two issues: the use of the police power in the furtherance of long-term public policy, which is the case here, and the improper delegation of the police power. Any policy, in order to have long-term beneficial effects must, necessarily, be binding upon the parties including the use of the

police power so as to acheve, over the long haul, the goals sought. It would be ironic at best, to rule to the contrary which, in effect, would thwart the State, the counties, and the landowners in achieving the desired long-term public goals under the Land Conservation Act Contract.

Clearly, the issues involved herein have important nationwide significance not only from the standpoint of farmers and the agriculture industry but also with respect to the protection and enforceability of contracts, in general, between private individuals and public agencies. Furthermore, the uncertainty and confusion of all parties concerned, both public and private, will hamstring agriculture, other industries, and people at large and create a multitude of litigation. It is essential that this Court review this case.

**4. The State Court Has Decided an Important Question of Federal law That Should Be Settled by the United States Supreme Court**

The California courts, including the Court of Appeal in this decision and, repeatedly, the California Surpreme Court, have decided important questions of federal law relating to, inter alia, the police power and the Contract, Taking, Substantive Due Process, and Equal Protections Clauses of the federal Constitution. Moreover, because of the nature of this matter in particular, especially with respect to the agriculture industry, these various, interwoven federal law questions need to be settled by the United States Supreme Court.

## CONCLUSION

The issues presented herein are critical and this Court's guidance, direction, and protection are needed not only by the appellants but also by the farmers/landowners of California and other agriculture states. Delucchis pray that probable jurisidiction be noted or that this Court grant the Petition for Writ of Certiorari pursuant to 28 U.S.C. Section 2103 and Rules of this Court, 17.1 (a), (b) and (c).

Respectfully Submitted,

ADAMS, LEVIN, KEHOE,
BOSSO, SACHS & BATES,
A Professional Corporation

By: DENNIS J. KEHOE
*Attorney for Appellants,*
*Andrew and Dorothy G.S. Delucchi*

**Appendix A**

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Superior Court of California
County of Santa Cruz

No. 83506

Andrew Delucchi and Dorothy G.S. Delucchi,
Plaintiffs/Petitioners,

v.

County of Santa Cruz,
California Coastal Commission,
and Does 1 through 50,
Defendants/Respondents.

---

No. 82382

Andrew Delucchi and Dorothy G.S. Delucchi,
Plaintiffs/Petitioners,

v.

County of Santa Cruz, Does 1 through 50,
Defendants/Respondents.

[Filed Oct. 11, 1984]

JUDGMENT

A Jury Trial having been waived, these matters came to trial on July 25, and July 26, 1984, the Honorable Roland K. Hall, presiding. Dennis J. Kehoe, attorney at law, represented the Plaintiffs; Dwight Herr, County Counsel, represented the County of Santa Cruz; and Joseph Barbieri, Deputy Attorney General, represented the California Coastal Commission. Trial briefs were filed on behalf of all the parties and evidence, both oral and

documentary was presented to the Court by all parties. The Court announced its tentative decisions. Thereafter, the County of Santa Cruz filed a Request for Statement of Decision. the Court has signed the Statement of Decision.

GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiffs are granted judgment against the Defendants, and each of them, as hereinafter set forth.

2. The landowner shall have specific performance of the contract entered into between County and Landowner on February 23, 1971, whereby the intent of the parties and the Williamson Act Contract, and each of them, require the Agricultural Preserve District regulations and text in effect on the date of the Contract remain unchanged during the term of the contract and the parties thereto are bound by the same including the permitted uses and conditional uses set forth therein. A copy of the Agricultural Preserve District regulations in effect at the time of the execution of this contract is attached hereto and incorporated herein by reference.

3. The defendants, and each of them, and their employees and representatives are restrained and enjoined from, either directly or indirectly, changing, impairing, interfering with, conditioning, eliminating, amending, altering, limiting, restricting or otherwise modifying this Williamson Act Contract including the Agricultural Preserve District regulations and text in effect on the date of the execution of the contract which includes but is not limited to, the permitted uses as a matter of right therein.

4. Nonetheless a discretionary Coastal Act approval is required for additional dwelling on the property; however, no discretionary Coastal Act approval is required for any greenhouses or other agricultural structures on the subject property.

5. Plaintiffs' request for attorney's fees is denied and each party shall bear their and its own attorney's fees.

6. Plaintiffs are granted costs of litigation herein against Defendants, and each of them.

DATED 10-11, 1984.

/s/ Roland K. Hall
Honorable Roland K. Hall,
Judge of The Superior Court

# ORDINANCE NO. 1283

## AN ORDINANCE AMENDING CHAPTER 13.04 OF THE SANTA CRUZ COUNTY CODE—REGULATIONS FOR AGRICULTURAL PRESERVE DISTRICT

The Board of Supervisors of the County of Santa Cruz do ordain as follows:

Section I

The Santa Cruz County Code Chapter 13.04 is hereby amended by adding thereto the following section:

13.04.155—Regulations for Agricultural Preserve Districts.

1. *Purpose.* The following regulations are designated to apply to agricultural lands and open space located within an agricultural preserve established in accordance with the provisions of the California Land Conservation Act of 1965 as now enacted or as hereafter amended.

A. Permitted Uses

(1) All agricultural uses, except those uses listed hereunder as Conditional Uses.

(2) One-family dwellings of the owner or lessee of the land or an employee of the owner or lessee of the land upon which the use or permitted use is carried on, but not to exceed one dwelling for each ten (10) acres of total site area.

(3) Accessory buildings and accessory uses, including storage tanks and pumps for fuel to be used on the premises; fruit packing and storage sheds; barns, stables and other farm outbuildings.

(4) Drying, packing or other processing of an agricultural commodity performed on the premises where it is produced.

(5) Stands for the display and sale of agricultural commodities produced on the premises or on other premises within the preserve.

(6) Living quarters accessory to the main dwelling unit for persons employed on the premises and relatives of the property owner or lessee, limited to a maximum of five such accessory

living units or one such living unit for each ten (10) acres of total site area, whichever is less. Such accessory living quarters may include mobile homes or trailers provided the use of more than one mobile home or trailer for this purpose on land under one ownership within an agricultural preserve shall be in accord with all state and local regulations applicable to mobile home or trailer housing.

(7) Home Occupations.

(8) Offices incidental and necessary to conduct a permitted use.

(9) Flood control works including channel rectification and alteration; streets and highways; and dams, canals and aqueducts of any public water project.

(10) Facilities for fish and wildlife enhancement and preservation.

(11) Non-illuminated signs appurtenant to any permitted use not in excess of twenty (20) square feet in area.

(12) Signs not in excess of six (6) square feet for the sale or lease of property upon which displayed.

(13) Any use required to be permitted by any amendment to the California Land Conservation Act of 1965 hereafter adopted.

(14) Any use existing on the date the land is included in an agricultural preserve; but such use, once discontinued for six (6) months shall not be resumed unless permitted under these rules.

b. Conditional Uses

(1) Animal feed yards.

(2) Animal sales yards.

(3) Hog Farms.

(4) Public Utility and public service pumping stations, power stations, drainageways and structures, and storage tanks.

(5) Fire protection works and facilities.

(6) Accessory living quarters in excess of five living units; farm labor camps, including mobile homes or trailers subject to the conditions of law or ordinance otherwise applicable.

(7) Public Parks.

(8) Any other use determined to be compatible to agriculture by the Board of Supervisors after the holding of a public hearing may be added to this list by the procedure set forth in Section 13.04.360 of this Chapter.

c. Minimum Parcel Size.

The minimum parcel size for a permitted use or a conditional use shall be ten (10) acres.

d. Yards

No building, accessory building, or farm out-building shall be less than twenty (20) feet from any property line.

e. Heights of Structures

The maximum height of a permitted or conditional use and its accessory structure shall be forty (40) feet.

f. Distance Between Structures

Incidental and accessory structures may be attached to and have a common wall with a main structure on a site or may be connected with a main structure by a breezeway, provided that a structure housing livestock shall not be attached to a structure used for human habitation. Where there is more than one (1) structure on a site, the minimum distance between any structure used for human habitation and another structure shall be ten (10) feet.

The minimum distance between dwelling units shall be twenty (20) feet. In either case, the minimum distance between structures shall be increased one (1) foot for every two (2) feet of height above the lowest sixteen (16) feet of height of either structure.

The minimum distance between a structure used for human habitation and a structure housing livestock shall be fifty (50) feet.

g. Off-Street Parking and Loading Facilities

Off-street parking facilities and off-street loading facilities shall be provided on the site of each use as prescribed in Section 13.04.280 et seq.

h. General Provisions and Exceptions

All uses shall be subject to the general provisions and exceptions prescribed in Section 13.04.300.

Section II

This ordinance shall take effect 30 days from and after the date of its adoption and before the expiration of 15 days after its passage shall be published once, with the names of the Board of Supervisors voting for and against the same in the Santa Cruz Sentinel and the Watsonville Register-Pajaronian, newspapers of general circulation printed and published in the County of Santa Cruz, State of California.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this 2nd day of January, 1968, by the following vote.

| | | |
|---|---|---|
| AYES: | SUPERVISORS | Black, Locatelli, Mello and McCallie |
| NOES: | SUPERVISORS | NONE |
| ABSENT: | SUPERVISORS | Burton |

/s/ _____
Chairman of said Board

ATTEST: /s/ Tom M. Kelley
Clerk of said Board

Approved as to form

/s/ James L. Rankin
Assistant County Counsel

**Appendix B**

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Superior Court of California
County of Santa Cruz

No. 83506

Andrew Delucchi and Dorothy G.S. Delucchi,
Plaintiffs/Petitioners,

v.

County of Santa Cruz,
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Defendants/Respondents.

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No. 82382

Andrew Delucchi and Dorothy G.S. Delucchi,
Plaintiffs/Petitioners,

v.

County of Santa Cruz, Does 1 through 50,
Defendants/Respondents.

[Filed Oct. 11, 1984]

## STATEMENT OF DECISION

A Jury Trial having been waived, these matters came to trial on July 25, and July 26, 1984, the Honorable Roland K. Hall, presiding. Dennis J. Kehoe, attorney at law, represented the Plaintiffs; Dwight Herr, County Counsel, represented the County of Santa Cruz; and Joseph Barbieri, Deputy Attorney General, represented the California Coastal Commission. Trial briefs were filed on behalf of all the parties and evidence, both oral and

documentary was presented to the Court by all parties. The Court announced its tentative decisions. Thereafter, the County of Santa Cruz filed a Request for Statement of Decision.

The following contains some of the background and facts herein. The County of Santa Cruz is hereinafter referred to as County; the California Coastal Commission is hereinafter referred to as Coastal Commission; and the Plaintiffs are hereinafter referred to as Landowner.

The legislation referred to herein is known as the Williamson Act or the California Land Conservation Act of 1965. The State Legislature saw fit to specifically authorize the County to enter into a binding contract, binding the County and the Landowner and their successors in interest. Moreover, the law specifically authorizes not only the County, but also the Landowner to bring "any action in court necessary to enforce any contract, including, but not limited to, an action to enforce the contract by specific performance or injunction." § 51251 of the Government Code. The binding contract and the terms thereof may be terminated or modified only as specifically authorized by state law.

Pursuant to this State Legislation, the County specifically enacted an AGRICULTURAL PRESERVE DISTRICT, Ordinance No. 1283, adopted on January 2, 1968, a copy of which is attached hereto. This particular Agricultural Preserve law was specifically established by the County in 1968 as a zone district to be applied to land under Williamson Act Contracts. The AGRICULTURAL PRESERVE, Ordinance No. 1283, specifically sets forth the purpose of that ordinance wherein it stated, in part,

> *PURPOSE.* The following regulations are designated to apply to agricultural lands . . . within an agricultural preserve established in accordance with the provisions of the CALIFORNIA LAND CONSERVATION ACT OF 1965. . . .

Furthermore, Ordinance No. 1283, Agricultural Preserve, specifically authorized as "permitted uses" without first obtaining any discretionary use permit approvals from the County. These "permitted uses" included such uses as "ALL agricultural uses, except those uses listed hereunder as conditional uses," "family dwellings of the owner," "accessory buildings and accessory

uses," "living quarters" for persons employed in agricultural or relatives of the property owner, "home occupations," "offices incidental and necessary to conduct a permitted use," and "any use required to be permitted by any amendment to the California Land Conservation Act of 1965."

Moreover, "conditional uses" requiring the landowner to apply for a use permit and obtain a use permit included such conditional items as animal feed yards and animal sales yards, hog farms, public utility stations and public parks.

The AGRICULTURAL PRESERVE DISTRICT enacted by County Ordinance No. 1283 in January 1968 was in existence at all times up to and including November 1982.

Prior to the execution of this contract, promises, representations, and inducements were made by the County Assessor and the County Planning Director to the Landowner whereby, inter alia, the Agricultural Preserve Zone District regulations, including the land uses permitted as a matter of right thereunder, in effect at the time of the execution of the contract would remain unchanged and would not be modified or eliminated during the term of the contract. The landowner, to its substantial detriment, reasonably and irreversibly relied upon these promises, inducements, and representations so as to change its position and enter into this contract with County.

Thereafter, a Williamson Act contract was entered into by the County and the landowner regarding the subject property on February 23, 1971. This binding contract was recorded in the Recorder's Office by the County Clerk on February 26, 1971, Book 2075 of the Official Records, Santa Cruz County, commencing at page 36. The land is located in Santa Cruz County, Assessor's Parcel Number 46-021-05. The contract states, inter alia, specifically that it "is made and entered into pursuant to the California Land Conservation Act of 1965," the land is to be located in the Agricultural Preserve zone established by the County. Pursuant to the Contract between the County and landowner dated February 23, 1971, the land was placed into the Agricultural Preserve Zone District established by Ordinance No. 1283.

After this contract between the County and the landowner, the County changed its Williamson Act Contracts and no longer used the Agricultural Preserve enacted by Ordinance No. 1283 for lands thereafter contracted. Consequently, at the present time, there are only the three or four owners in all of Santa Cruz County, including this landowner, in this category.

The County drafted this contract executed by County and landowner.

The County Planning Staff proposed to the County Planning Commission that the few properties under Williamson Act Contracts with the Agricultural Preserve Zone District (AP) established in 1968 by Ordinance No. 1283, be rezoned from AP to "CA District" (Commercial Agricultural), and eliminate altogether the AP zone district itself. Commercial Agricultural Zone (CA) is highly restrictive as compared to the Agricultural Preserve Zone District in effect at the time of the execution of this Contract. The Santa Cruz County Planning Commission recommended to the Board of Supervisors that the subject property remain in Agricultural Preserve (AP) Zone District, rather than rezone it from AP to CA and that the text of the Agricultural Preserve Zone District, pursuant to Ordinance No. 1283, remain as it had for over a decade, with the exception of renumbering the code sections.

Thereafter, the matter was heard by the Board of Supervisors. Over the objections of the landowner as well as the County Farm Bureau, the Board of Supervisors, rather than retain the land in the AP zone and keep the original text of the AP zone as recommended by the Planning Commission, completely rewrote and substantially changed the AP zone and made the text of that zone district almost identical to the highly restrictive Commercial Agricultural Zone (CA). Many of the "permitted uses," as a matter of right, including those represented and communicated by County to the landowner prior to the execution of the Contract in 1971, were eliminated and some discretionary possible uses were eliminated.

Over objection of the landowner, the Coastal Commission conditionally approved the same. Thereafter, the County adopted the same with Supervisor Forbus and Moore voting "no".

At all times the landowner has stressed with Defendants its rights and objected to the violation of its rights under the contract as well as its rights under the United States Constitution and the Federal Civil Rights Act including the elimination of the Agricultural Preserve Zone District and all changes and modifications to the regulations and text of the Agricultural Preserve Zone District in effect at the time of the execution of the contract.

If the County is allowed to change the permitted land use after the execution of the Williamson Act Contracts without the consent of the landowner, this will have substantial, adverse affect on this State legislation in that landowners, generally, just will be reluctant to enter into these contracts so as to bind themselves, but leave the counties free to change the permitted land uses.

The Coastal Act of 1976 specifically restricts the power of the Coastal Commission in that any goals, including the implementiation of the LCP, shall be consistent with . . . constitutionally protected rights of private property owners . . . not take or damage private property for public use, without the payment of just compensation therefor . . . . In connection with the California Coastal Act, during the debate on Senate Bill 1277, among other items, certain questions were raised relevant to the interpretation of several provisions of the same. State Senator Jerry Smith had entered in the Senate Journal, August 31, 1976, pages 16967-8. A copy of the same is attached hereto.

Furthermore, the REQUEST FOR STATEMENT OF DECISION, raised certain issues:

1. Whether the alleged guarantee of the County Planning Director and County Assessor that the uses allowed in the Agricultural Preserve Zone District would remain unchanged during the term of the Williamson Act would be binding on the County.

As such and by themselves, no.

2. Whether the Williamson Act provides that the zoning in effect when a Williamson Act contract is executed remain unchanged during the term of the contract.

The Williamson Act provides, inter alia, that a binding contract between the landowner and County can be executed by those parties and enforced by the same. The intent of the parties was that the zoning, zoning regulations and the text thereof, in effect at the time of the Williamson Act Contract remain unchanged during the term of this particular contract.

The written contract is ambiguous. The contract was prepared by the County. Therefore, any ambiguity must be construed against the County. The contract required that the zoning, zoning text and zoning regulations remain the same during the contract period. The County promised, inter alia, to maintain the same zoning, zoning regulations and text during the contract period. The landowner relied on the promise of the County not to change the zoning, zoning regulations and text during the term of the contract. Further, the landowner gave up development potential that had significant value in reliance upon the promises of the County. A change in the zoning, zoning text or zoning regulations would constitute a breach of the contract. The landowner is entitled to specific performance of the contract, including the fact that the zoning, zoning text and the zoning regulations shall remain the same during the term of the contract.

3. Whether the Williamson Act contract entered into between the plaintiff and the County prohibits the County from making any modifications to the Agricultural Preserve Zone District regulations during the term of the contract, including any changes to implement the California Coastal Act.

The intent of the parties in the Contract was that there would be no modifications of the Agricultural Preserve Zone District regulations during the term of the contract unless, however, there is the mutual consent of the parties to the contract which, in this case, there was not.

4. Whether provisions in a Williamson Act contract precluding any modifications of the zoning regulations in effect upon the

execution of the contract are invalid as an unlawful delegation of police power.

No, as applied to this particular contract. As applied to this particular case, the acts of the defendants are unreasonable. Second, even assuming arguendo, that there was the exercise of an otherwise legitimate police power herein, the Contract Clause of both the United States Constitution and the State Constitution is not a deadletter and it does impose limits upon the power of the Defendants to impair the existing contractual relationships between the County and the landowner. The provisions in this particular Williamson Act Contract and the intent of the parties precluding any modification of the zoning, zoning regulations, and text in effect upon the execution of the contract are not a delegation of the police power, and further, even if the same was a delegation of the police power, the contract is *not* invalid as an unlawful delegation of the police power.

Moreover, there are potentially two conflicting policies, namely—the agency cannot contract away its zoning power and the policy to encourage landowners to enter into Agricultural Preserve, Williamson Act contracts which preserves agricultural land. Most landowners would have significant reluctance to sign any long term contract, such as a Williamson Act contract, unless he/she was assured that the land use regulations during the term of the contract would remain the same. Among other items, the landowner cannot weigh the various considerations in a Williamson Act contract unless the zoning, zoning regulations, and text including the permitted uses thereunder, remain the same and are known during the life of the proposed contract.

In this particular case, the policy to preserve agricultural lands and encourage landowners to enter Williamson Act contracts outweighs the policy against contracting away police powers. Further, this is a limited exception to the policy against contracting away police powers since this is applicable only to the preservation of agricultural land and Williamson Act contracts which, in turn, provided by law means to terminate or cancel the Williamson Act contract.

5. Whether the plaintiffs are required to obtain a discretionary Coastal Act approval from the County in order to construct any additional dwellings on the subject property.

Yes.

6. Whether the plaintiffs are required to obtain a discretionary Coastal Act approval from the County in order to construct any greenhouses or other agricultural structures.

No. The intent of the Legislature with respect to the Coastal Act is that the Coastal Act shall not apply to, inter alia, agricultural operations and practices including greenhouses and other agricultural structures.

7. Whether the County's present Agricultural Preserve Zone District regulations, modified as part of the County's implementation of the California Coastal Act, continue to allow with a discretionary permit approval the same uses as were allowed in the Agricultural Preserve Zone District in effect when the Williamson Act contract was executed.

Initially, the uses permitted as a matter of right in the Agricultural Preserve Zone District regulation in effect at the time of the execution of this contract are much more expansive and great in number than the comparatively few permitted uses in the present AP regulation of the County.

Also, the uses for which applications for a discretionary permit can be made under this present AP regulation are more restrictive and fewer in number than those contained in the AP regulations effective on the date of this contract.

Among other items, a "discretionary permit approval" is not a use permitted as a matter of right. There is no right of the landowner to a "discretionary permit approval." Moreover, even if a "discretionary permit approval" is obtained under the present Agricultural Preserve Zone District regulations, because of restrictions in those regulations, in many instances the "discretionary permit approval" is more restrictive than the allowed uses permitted as a matter of right in the Agricultural Preserve Zone District regulations in effect when this Williamson Act Contract was executed herein.

Furthermore, even if the County's present Agricultural Preserve Zone District regulations allowed an application to be filed for the same uses that were allowed as a matter of right without any application in the Agricultural Preserve Zone District regulations in effect when this Williamson Act Contract was executed, no reasonable comparison between the two can be made. Among other items, a permitted use as a matter of right is a right of the landowner and not discretionary with the public agency.

Also, a "discretionary permit approval" can impose conditions and restrictions that otherwise could not be imposed on a use permitted as a matter of right. Further, the County's present Agricultural Preserve Zone District regulations, even assuming that a "discretionary permit approval" had been obtained, are more restrictive in some instances than the uses permitted as a matter of right to the landowner in the Agricultural Preserve Zone District regulations in effect when the Williamson Act Contract was executed.

Moreover, if the use is permitted as a matter of right under the Agricultural Preserve Zone District in effect when the Williamson Act Contract was executed, the landowner could proceed with that permitted use in a prompt manner at his choosing. Nevertheless, no use is a use at all if a discretionary permit approval application is required. The application process is not only time consuming involving expense to the landowner, but it is, obviously, discretionary with County as to any approval.

8. Whether plaintiffs were required to exhaust their administrative remedies of applying for permits for uses desired on the subject property prior to prosecuting this lawsuit.

Initially, the original contract between the County and the landowner provided and it was intended that there be the land uses as set forth in the Agricultural Preserve District regulation and text existent at the time of the contract as part of the contract. Among other items, to eliminate those land uses, as a matter of right, constitues a breach of the contract between County and Landowner. Furthermore, there are no administrative remedies as applied thereto. Nevertheless, even assuming that there were administrative remedies, Plaintiffs are not required to

apply for permits for discretionary uses desired on the subject property prior to prosecuting this particular litigation.

9. Whether there was any issue "ripe" for adjudication.

Yes.

10. What relief, if any, are plaintiffs entitled to be granted.

Initially, the Landowner is entitled relief under § 51251 of the Government Code and may bring an action in this Court to enforce the contract including, but not limited to, an action to enforce the contract by specific performance or injunctive relief. Moreover, the landowner is entitled to relief under a Mandamus proceeding.

The landowner is entitled to specific performance of the contract entered into between County and Landowner on February 23, 1971, whereby the intent of the parties and the Williamson Act Contract, and each of them, require the Agricultural Preserve District regulations and text in effect on the date of the Contract remain unchanged during the term of the contract and the parties thereto are bound by the same including the permitted uses and conditional uses set forth therein. A copy of the Agricultural Preserve District regulations in effect at the time of the execution of this contract is attached hereto and incorporated herein by reference.

The defendants, and each of them, and their employees and representatives are restrained and enjoined from, either directly or indirectly, changing, impairing, interfering with, conditioning, eliminating, altering, amending, limiting, restricting or otherwise modifying this Williamson Act Contract including the Agricultural Preserve District regulations and text in effect on the date of the execution of the contract, which includes but is not limited to the permitted uses as a matter of right therein.

Nonetheless, a discretionary Coastal Act approval is required for additional dwellings on the property; however, no discretionary Coastal Act approval is required for any greenhouses or other agricultural structures on the subject property.

DATED October 11, 1984.

/s/ ROLAND K. HALL
Honorable Roland K. Hall,
Judge of the Superior Court

A-19

# ORDINANCE NO. 1283

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(3) Accessory buildings and accessory uses, including storage tanks and pumps for fuel to be used on the premises; fruit packing and storage sheds; barns, stables and other farm outbuildings.

(4) Drying, packing or other processing of an agricultural commodity performed on the premises where it is produced.

(5) Stands for the display and sale of agricultural commodities produced on the premises or on other premises within the preserve.

(6) Living quarters accessory to the main dwelling unit for persons employed on the premises and relatives of the property owner or lessee, limited to a maximum of five such accessory living units or one such living unit for each ten (10) acres of total

site area, whichever is less. Such accessory living quarters may include mobile homes or trailers provided the use of more than one mobile home or trailer for this purpose on land under one ownership within an agricultural preserve shall be in accord with all state and local regulations applicable to mobile home or trailer housing.

(7) Home Occupations.

(8) Offices incidental and necessary to conduct a permitted use.

(9) Flood control works including channel rectification and alteration; streets and highways; and dams, canals and aqueducts of any public water project.

(10) Facilities for fish and wildlife enhancement and preservation.

(11) Non-illuminated signs appurtenant to any permitted use not in excess of twenty (20) square feet in area.

(12) Signs not in excess of six (6) square feet for the sale or lease of property upon which displayed.

(13) Any use required to be permitted by any amendment to the California Land Conservation Act of 1965 hereafter adopted.

(14) Any use existing on the date the land is included in an agricultural preserve; but such use, once discontinued for six (6) months shall not be resumed unless permitted under these rules.

b. Conditional Uses

(1) Animal feed yards.

(2) Animal sales yards.

(3) Hog Farms.

(4) Public Utility and public service pumping stations, power stations, drainageways and structures, and storage tanks.

(5) Fire protection works and facilities.

(6) Accessory living quarters in excess of five living units; farm labor camps, including mobile homes or trailers subject to the conditions of law or ordinance otherwise applicable.

(7) Public Parks.

(8) Any other use determined to be compatible to agriculture by the Board of Supervisors after the holding of a public hearing may be added to this list by the procedure set forth in Section 13.04.360 of this Chapter.

c. Minimum Parcel Size.

The minimum parcel size for a permitted use or a conditional use shall be ten (10) acres.

d. Yards

No building, accessory building, or farm out-building shall be less than twenty (20) feet from any property line.

e. Heights of Structures

The maximum height of a permitted or conditional use and its accessory structure shall be forty (40) feet.

f. Distance Between Structures

Incidental and accessory structures may be attached to and have a common wall with a main structure on a site or may be connected with a main structure by a breezeway, provided that a structure housing livestock shall not be attached to a structure used for human habitation. Where there is more than one (1) structure on a site, the minimum distance between any structure used for human habitation and another structure shall be ten (10) feet.

The minimum distance between dwelling units shall be twenty (20) feet. In either case, the minimum distance between structures shall be increased one (1) foot for every two (2) feet of height above the lowest sixteen (16) feet of height of either structure.

The minimum distance between a structure used for human habitation and a structure housing livestock shall be fifty (50) feet.

g. Off-Street Parking and Loading Facilities

Off-street parking facilities and off-street loading facilities shall be provided on the site of each use as prescribed in Section 13.04.280 et seq.

h. General Provisions and Exceptions

All uses shall be subject to the general provisions and exceptions prescribed in Section 13.04.300.

Section II

This ordinance shall take effect 30 days from and after the date of its adoption and before the expiration of 15 days after its passage shall be published once, with the names of the Board of Supervisors voting for and against the same in the Santa Cruz Sentinel and the Watsonville Register-Pajaronian, newspapers of general circulation printed and published in the County of Santa Cruz, State of California.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this 2nd day of January, 1968, by the following vote.

| | | |
|---|---|---|
| AYES: | SUPERVISORS | Black, Locatelli, Mello and McCallie |
| NOES: | SUPERVISORS | NONE |
| ABSENT: | SUPERVISORS | Burton |

/s/ _____
Chairman of said Board

ATTEST: /s/ Tom M. Kelley
Clerk of said Board

Approved as to form

/s/ James L. Rankin
Assistant County Counsel

Assembly Chamber, August 30, 1976

Mr. President: I am directed to inform your honorable body that the Assembly on this day concurred in Senate amendments to:

| | | | |
|---|---|---|---|
| AB 1417 | AB 3626 | AB 4086 | AB 4297 |
| AB 2856 | AB 3704 | AB 4090 | AB 4320 |
| AB 2948 | AB 3706 | AB 4108 | AB 4329 |
| AB 3318 | AB 3740 | AB 4137 | AB 4423 |
| AB 3380 | AB 3839 | AB 4150 | AB 4512 |
| AB 3580 | AB 3858 | AB 4195 | AB 4521 |
| AB 3582 | AB 3883 | AB 4262 | AB 4524 |

JAMES D. DRISCOLL, Chief Clerk of the Assembly
By R. Brian Kidney, Assistant Chief Clerk

Assembly Chamber, August 31, 1976

Hon. James R. Mills
President pro Tempore of the Senate

Dear Mr. President: The Assembly on this day, by two-thirds vote, dispensed with Joint Rule 29.5(a) as it pertains to the Conference Committee on Senate Bill No. 2139, and respectfully requests the Senate to do the same.

Very truly yours,
JAMES D. DRISCOLL, Chief Clerk

Assembly Chamber, August 30, 1986

Mr. President: I am directed to inform your honorable body that the Assembly on this day concurred in Senate amendments to:

ACR 176
ACR 228

JAMES D. DRISCOLL,
Chief Clerk of the Assembly
By R. Brian Kidney, Assistant Chief Clerk

## MOTION TO PRINT IN JOURNAL

Senator Smith moved that the following letter be printed in the Journal.

Motion carried.

State Senator Jerry Smith
Sacramento, August 30, 1976

Darryl R. White, Secretary of the Senate

Dear Mr. White: During the debate on SB 1277, questions were raised relative to the interpretation of several provisions in the bill. Several of these questions have been dealt with in AB 2948. By including this letter in the Senate Journal, it is my purpose to clarify my intent, as the author of SB 1277, with respect to the remaining provisions. I have made these same statements of intent before both Senate and Assembly committees. Speaker McCarthy made similar representations, with my full concurrence, during the debate on this bill before the full Assembly.

1. The area within which the provisions of SB 1277 apply:

The coastal commission's jurisdiction and the area to which the provisions of SB 1277 apply is the coastal zone and is limited entirely to that area inside the specifically delineated boundaries described in Section 17 of the bill and shown on the maps adopted by Committee, dated August 11, 1976, and which are on file with the Secretary of State, The planning and regulatory requirements of this bill do not apply inland of these boundaries of the coastal zone (see paragraph 2 below).

The coastal commission has no direct permit or planning controls, pursuant to SB 1277, over any area or the activities of any other public agency outside the coastal zone (i.e., the commission may only deal with those activities occurring within the coastal zone). The area outside the specifically mapped coastal zone remains under the exclusive jurisdiction of existing units of local and state government and the authority, power, duties and reponsibilities of the latter are not changed by this bill. The only charge to such agencies is (see Section 30200) that where their activities outside the coastal zone could have a direct impact on resources within the coastal zone, they must *consider*

the effect of such activities relative to the policies of this bill. This provision *can be fully met* if such effects are considered by way of the environmental impact review process. No additional requirements are required or intended by this section.

2. Section 30103 (b) requires the coastal commission to map, in even greater detail than shown on the filed maps, the precise inland boundaries of the coastal zone. This section allows adjustment of the inland boundary *"landward"* no more than 100 yards to avoid bisecting lots or parcels in single ownership. The term "landward" means inland, away from the mean high tideline. It does not mean the commission can move the line seaward, or toward the ocean.

3. The use of agricultural lands:

SB 1277 does not, is not intended to, and should not be construed to authorize the coastal commission to mandate, prescribe or otherwise regulate agricultural operations or management practices (including, but not limited to: types of crops to be cultivated, harvested or processed; types of animals or poultry to be raised or processed; cropping patterns; irrigations, cultivation or yield techniques).

4. Section 30254 merely expresses legislative intent that Scenic Highway 1 in the rural areas of the coastal zone remain a two-lane highway. This section does not preclude the improvement of Highway 1 for safety reasons, nor is this section intended to prevent the development of appropriately sited pull-outs or passing lanes to increase the flow of traffic. In this regard, this section does not preclude the construction of a bypass around the Devil's Slide area of San Mateo County.

Sincerely,

JERRY SMITH

**Appendix C**

In the Court of Appeal of the
State of California
Sixth Appellate District
H000161
Santa Cruz County
Sup.Ct.No. 83506 and 82382

See Concurring Opinion
Certified for Publication

Andrew Delucchi and Dorothy G. S. Delucchi,
Plaintiffs and Appellants,

v.

County of Santa Cruz, et al.
Defendants and Appellants.

[Filed April 3, 1986]

OPINION

Plaintiffs Andrew and Dorothy Delucchi are the owners of approximately 163 acres of land in the coastal zone bordering the residential community of La Selva Beach in Santa Cruz County. On February 23, 1971, plaintiffs and the County of Santa Cruz (County) entered into a contract pursuant to the Land Conservation Act of 1965, also known as the Williamson Act (Gov. Code §§ 51200-51295) wherein it was agreed that the above-noted property would be restricted to agricultural and compatible uses. Thereafter, County placed the subject property into an "agricultural preserve" (A-P) zone. The A-P zone in effect at the time the contract was executed authorized a single-family dwelling for each ten acres of total site area as a *permitted*, i.e. non-discretionary use. Except for certain specified conditional uses, all agricultural uses, including "accessory buildings", were similarly designated as permitted uses for which it was not necessary to obtain a discretionary permit from the County. Greenhouses were not specified as conditional uses.

On November 7, 1972, the California Coastal Act (now codified in Pub. Res. Code sections 30000 et seq.) was adopted by

voter initiative.[1] Pursuant to the mandates of the Coastal Act, as revised by the State Legislature, County was required to adopt a Local Coastal Program (LCP) which conformed to the policies of the Coastal Act. (Pub. Res. Code, §§ 30500-30525) In 1982, as part of the implementation of its LCP, County adopted new zoning ordinances, including a revised A-P zone applicable to the subject property. Under this revised A-P zone, a discretionary permit, including coastal permit approval, is required for the construction of dwelling units (one single-family unit per 40 acres), greenhouses and other agricultural structures.

In 1982, plaintiff commenced the underlying actions[2] against County and the California Coastal Commission (Commission) alleging, inter alia, that the adoption of the revised A-P zone constituted a breach of their Williamson Act contract and violated a number of their rights under the United States Constitution, including the contract and due process clauses, and also violated the federal Civil Rights Act (42 U.S.C. § 1983). They sought specific performance, damages and attorney's fees.

At trial, plaintiffs sought to establish the following through extrinsic evidence: that they had been induced to enter the Williamson Act contract by promises of County officials that the text of the A-P zone, including the designation of permitted and conditional uses, would remain the same throughout the term of the contract; that plaintiffs would not have entered into the contract had they thought that the County could unilaterally change the text of the A-P zone ordinance; that the alleged guarantee of land uses, as designated in the original A-P zone, was a part of their contract; and that the primary reason for plaintiffs' execution of the contract was to guarantee these land uses for the life of the contract. Evidence supporting these allegations consisted of plaintiff Andrew Delucchi's testimony

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[1] For a more thorough discussion of California Coastal legislation, see *Pacific Legal Foundation v. California Coastal Comm.* (1982) 33 Cal.3d 158, 162-163.

[2] Action No 82382 against the County and Action No. 83506 against the County and the Coastal Commission were consolidated for all purposes.

concerning oral representations made prior to the execution of the contract by the Tax Assessor and the Planning Director, to the effect that the contract would freeze the zoning.

According to Delucchi, plaintiffs intended to construct family dwellings for themselves and their two adult daughters and to engage in various agricultural land uses. In fact, at time of trial plaintiffs had already completed the construction of two single-family dwellings on the property, one for each of their daughters and their respective families. These homes were built in 1980 and 1982 after plaintiffs applied for and were granted discretionary permits from the Commission.

Following a two-day trial, the court below found the written contract was ambiguous concerning the question of whether or not the original A-P zone was to remain in effect throughout the term of the contract. Resolving this ambiguity against the County, the trial court concluded that the contract did contain a promise not to alter the original A-P zone. Accordingly, the trial court ruled plaintiffs were entitled to specific performance and enjoined the County and the Commission from altering, interfering with, or otherwise modifying the contract at issue, including the A-P district regulations and text in effect on the date of the execution of the contract. Notwithstanding its decision concerning the interpretation of the terms of the contract, the trial court also determined that plaintiffs were still subject to the permit requirements of the Coastal Act and must apply for a discretionary permit from the Coastal Commission for the construction of any additional dwellings on the property. Regarding the construction of greenhouses, however, the trial court held that the Coastal Act does not apply to such structures. Finally, the trial court ruled that the case constituted a private action which did not "rise to the dignity of a Civil Rights Act violation", and therefore ordered each party to bear their own attorney fees.

All parties have appealed. Appellants, the County and Commission, contend that the trial court erred in ruling that greenhouses do not constitute a "development" under the Coastal Act. They further contend that the Williamson Act contract did not freeze the original A-P zone, or, if it did, that such a provision would be invalid as an unlawful delegation of its zoning authority

pursuant to the police power. Plaintiffs/cross-appellants urge a reversal of that part of the trial court's judgment requiring a discretionary permit for additional dwellings. They also seek a reversal of that portion of the judgment denying their various claims under the Civil Rights Act[3] and contend that they are entitled to attorney's fees on both the trial and appellate levels pursuant to section 1988.[4]

## DISCUSSION

In 1965, our State Legislature enacted the Williamson Act in an endeavor to preserve agricultural land and discourage the premature and unnecessary conversion of such land to urban uses. (Gov. Code § 51200 et seq.) Under the act local governments are authorized to establish agricultural preserves (Gov. Code § 51230) wherein land uses are limited to agricultural and compatible uses. (Gov. Code § 51243) The act further empowers the government entity to enter into annually renewable contracts restricting land use for a minimum term of ten years. (Gov. Code §§ 51240, 51242, 51244) In return for agreeing to restrict the use of his land in accordance with the act, the landowner receives a reduced property tax assessment based on the value of the land for its current use as opposed to its market value. (Cal. Const.,

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[3] 42 U.S.C. section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

[4] Section 1988, in pertinent part, states: "In any action or proceeding to enforce a provision of section . . . 1983, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

art. XIII, § 8, formerly art. XXVIII[5]; *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 851; *Honey Springs Homeowners Assn. v. Board of Supervisors* (1984) 157 Cal.App.3d 1122, 1131; *Shellenberger v. Board of Equalization* (1983) 147 Cal.App.3d 510, 513; *Kelsey v. Colwell* (1973) 30 Cal.App.3d 590, 592.) The landowner may terminate the contract by serving notice upon the local government, but is prescribed from developing the land during the balance of the contract term. (Gov. Code § 51246) Upon notice of non-renewal, taxes on the property gradually return to tax levels for non-restricted property. (Rev. & Tax Code § 426)

I

The Contract Cannot Reasonably Be Interpreted As a Promise By the County That the Existing Zoning Would Not Be Changed.

The applicable principles of appellate review concerning the interpretation of written agreements are well settled. "[I]t is a 'judicial function to interpret a written instrument unless the

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[5] At the time the contract herein was executed, article XXVIII provided: "Section 1. The people hereby declare that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence open space lands for the production of food and fiber and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The people further declare that assessment practices must be so designed as to permit the continued availablility of open space lands for these purposes, and it is the intent of this article to so provide. [¶] Sec. 2. Notwithstanding any other provision of this constitution, the Legislature may by law define open space lands and provide that when such lands are subject to enforceable restriction, as specified by the Legislature, to the use thereof solely for recreation, for the enjoyment of scenic beauty, for the use of natural resources, or for production of food or fiber, such lands shall be valued for assessment purposes on such basis as the Legislature shall determine to be consistent with such restriction and use. All assessors shall assess such open space lands on the basis only of such restriction and use, and in the assessment thereof shall consider no factors other than those specified by the Legislature under the authorization of this section. [New article adopted November 8, 1966.]"

interpretation turns upon the credibility of extrinsic evidence.' The possibility that conflicting inferences can be drawn from uncontroverted evidence does not relieve the appellate court of its duty independently to interpret the instrument; it is only when the issue turns upon the credibility of extrinsic evidence, or requires a resolution of a conflict in that evidence that the trial court determination is binding. [Citation.]" *Estate of Dodge* (1971) 6 Cal.3d 311, 318; accord *Gribaldo, Jacobs, Jones & Associates v. Agrippina Versicherunges A.G.* (1970) 3 Cal.3d 434, 445; *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; *Blumenfeld v. R.H. Macy & Co.* (1979) 92 Cal.App.3d 38, 44.)

"The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible. [Citations.]" (*Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 435, quoting *Pacific Gas & E. Co. v. G.W. Thomas Drayage Etc. Co.* (1968) 69 Cal.2d 33, 37; accord *Blumenfeld v. R.H. Macy & Co.*, supra, 92 Cal.App.3d 38, 45.)

In order to make this determination, the trial court should provisionally consider all credible evidence concerning the intention of the parties so that the court can place itself in the same situation in which the parties found themselves at the time they entered the agreement. (*Pacific Gas & E. Co., supra*, 69 Cal.2d 33, 39-40.) If, after considering this evidence, the trial court determines that the contract is reasonably susceptible to the offered interpretation, then the court may admit the extrinsic evidence to interpret the contract. However, if the contract is not reasonably susceptible to the offered interpretation, the evidence is irrelevant and inadmissable to interpret the contract. (*Blumenfeld, supra*, 92 Cal.App.3d 38, 45.)

In the case at bar, the extrinsic evidence is not in conflict. Since the interpretation of the agreement does not turn on the credibility of extrinsic evidence, it is this court's duty to independently interpret the contract and determine whether the evidence offered by plaintiffs is relevant to prove a meaning to which the language of the agreement is reasonably susceptible.

At the outset, we observe that Clause 3 of the agreement contains the only language which could conceivably support the interpretation offered by plaintiffs.[6] It reads, in pertinent part, as follows: "County agrees not to authorize any uses, other than those permitted by the County Zoning Ordinance in the Agricultural Preserve (A-P) Zone, during the term of this contract . . . ."

Aware, however, of the well established rule that "[t]he whole of a contract is to be taken together, so as to give effect to every part" (Civ. Code, § 1641), we proceed to examine those other portions of the contract here relevant.

The "Whereas" Clause on page one of the agreement[7], in accordance with the objectives of the Williamson Act, announces the desire of the parties to limit the use of the subject property to "agricultural uses and those compatible uses allowed" in the A-P zone.

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[6] "In consideration of the execution hereof by Owner and the execution of similar contracts by other property owners within the same agricultural preserve, County agrees not to authorize any uses, other than those permitted by the County Zoning Ordinance in the Agricultural Preserve (A-P) Zone, during the term of this contract or any renewal thereof. Nothing herein shall prohibit a change of boundaries of said Agricultural Preserve to omit lands not subject to a contract or to include additional lands."

[7] "WHEREAS, Owner is the owner of certain real property in the County of Santa Cruz, which property is presently devoted to agricultural use and is described in Exhibit "A" attached hereto; and

WHEREAS, said property is located in an agricultural preserve heretofore established by County; and

WHEREAS, both Owner and County desire to limit the use of said property to agricultural uses and those compatible uses allowed in the Agricultural Preserve (A-P) Zone, in order to discourage premature and unnecessary conversion of such land to urban use, recognizing that such land has substantial public value as open space and that the preservation of such land in agricultural production constitutes an important physical, social, esthetic, and economic asset to County, and

WHEREAS, the parties have determined that the highest and best use of such land during the life of this contract, or any renewal thereof, is for agricultural purposes . . . ."

Clause 2 of the contract[8], again in accordance with the codified objectives of the Act, also speaks to the uses to which the land shall be restricted during the term of the contract: "the . . . . land shall be used for the commercial production of agricultural commodities and/or those compatible uses allowed" in the A-P zone.

In Clause 4, the *owner* "agrees to restrict his property to those uses authorized" in the A-P zone.

Clause 8 recites the consideration: for County, the substantial public benefit [in preserving open space land]; for plaintiffs, "the advantage which will accrue to Owner in the event of any reduction in the assessed value of said property due to the *imposition* of the limitations on its use contained herein." (Emphasis added.)

Importantly, except for Clause 3, the contract speaks in terms of use restrictions either imposed by the County or agreed to by plaintiff landowners. Only in Clause 3 is there any language which purports to bind the County, and this language, once again, refers to *uses*, not to the right of the County to *regulate* those uses. Moreover, it is clear from the record that though the revised A-P zone regulates the uses of the subject property in a more restricted manner than did the original A-P zone, those uses are still the same: agricultural and compatible uses. Nowhere in the contract is there any language purporting to limit the County's power to prescribe which uses shall be permitted as a matter of right and which uses allowed on a discretionary or conditional basis. Neither is there any language purporting to prohibit the County from regulating those uses accordingly. The language in Clause 3 merely recites County's obligation under the Williamson Act (Gov. Code § 51242, 51243) to preclude more intensive uses

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[8] "During the term of this contract the above-described land shall be used for the commercial production of agricultural commodities and/or those compatible uses allowed in the Agricultural Preserve (A-P) Zone of the County Zoning Ordinance. No structures shall be erected upon said land except such structures as may be incidental to and compatible with such uses."

of the property. No one argues that the County has not fulfilled this obligation.

We next turn to public policy considerations raised by plaintiffs' proferred interpretation. Land use regulations, including the power to zone, involve the exercise of the sovereign's police power. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800; *Carty v. City of Ojai* (1978) 77 Cal.App.3d 329, 342; *Scrutton v. County of Sacramento* (1969) 275 Cal.App.2d 412, 419.) A government "may not contract away its right to exercise the police power in the future. [Citations.]" (*Avco, supra,* at p. 800; accord *Mott v. Cline* (1927) 200 Cal. 434, 446.) Moreover, contracts purporting to do so are invalid and unenforceable as contrary to public policy. (*Avco, supra,* at p. 800.) " ' "The police power being in its nature a continuous one, must ever be reposed somewhere, and cannot be barred or suspended by contract or irrepealable law. It cannot be bartered away even by express contract." [Citations.] It is to be presumed that parties contract in contemplation of the inherent right of the state to exercise unhampered the police power that the sovereign always reserves to itself for the protection of peace, safety, health and morals. Its effect cannot be nullified in advance by making contracts inconsistent with its enforcement . . . ." [Citations]" (*Carty, supra,* at p. 342, quoting *Mott v. Cline, supra,* at p. 446.) Thus, taking heed of the long established rule that a contract must, if possible, be interpreted so as to make it "lawful, operative, definite, reasonable, and capable of being carried into effect" (Civ. Code § 1643), we point out that were we to uphold the interpretation urged by plaintiffs, i.e. that the contract effectuated a wholesale freeze of zoning neither contemplated nor authorized by the Williamson Act, we would be compelled to find the agreement herein invalid.[9]

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[9] Under the mandates of Government Code sections 51242 and 51243, land subject to Williamson Act contracts must be restricted to agricultural and compatible uses. By promising to so restrict plaintiffs' property, County did not relinquish its right to exercise the police power, but simply reiterated its obligation to exercise that power in accordance with state law. (See Cal. Const. art. XI, § 7.)

In summary, the contract does not properly lend itself to an interpretation that would prohibit the County from changing the zoning. Secondly, even if we were to find that it could be so construed, the contract would be invalid as an attempt by the County to surrender its future right to exercise the police power.

For each of the above-stated reasons, we find that the contract is not reasonably susceptible to the meaning advanced by plaintiffs. Consequently, the extrinsic evidence admitted by the trial court will not support the judgment because it is irrelevant.[10] (*Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 16-17; *Blumenfeld v. R.H. Macy & Co., supra*, 92 Cal.App.3d 38, 46.) Since our decision on this point is dispositive, it is not necessary to address plaintiffs' contentions concerning the Contract Clause of the Constitution.

II

Next, we proceed to examine the trial court's determination, based upon evidence of legislative history[11], that the California Coastal Act does not apply to greenhouses.

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[10] The trial court found oral representations concerning the effect of the contract on the zoning of the subject property were made by County officials without authority to contractually bind the County. Thus, extrinsic evidence to this effect, even if admissible, would not support the position maintained by plaintiffs.

[11] The trial court's conclusion was based solely upon a letter written by the author of Senate Bill 1277 (the California Coastal Act of 1976), and incorporated into the Senate Journal Record during deliberations on the Act. The letter reads, in pertinent part: "3. The use of agricultural lands: ¶ SB 1277 does not, is not intended to, and should not be construed to authorize the coastal commission to mandate, prescribe or otherwise regulate agricultural operations or management practices (including, but not limited to: types of animals or poultry to be raised or processed; cropping patterns; irrigation, cultivation or yield techniques). . . ." Even had this letter been properly considered by the trial court, we note that there is no reference therein to exemptions for agricultural structures. Its relevance therefore is, at best, marginal.

Public Resources Code section 30600, subd. (a) provides: "In addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency . . . any person wishing to perform or undertake *any development* in the coastal zone . . . shall obtain a coastal development permit." (Emphasis added.)

The definition of "development" is found in Public Resources Code section 30106: " 'Development' means . . . the placement or erection of *any solid material or structure* . . . [¶] As used in this section, 'structure' *includes, but is not limited to*, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Emphasis added.)

It has long been held that where statutory language is clear and unambiguous "there is no need for construction, and courts should not indulge in it . . . Unless [the party urging an alternative construction] can demonstrate that the natural and customary import of the statute's language is either 'repugnant to the general purview of the act,' or for some other compelling reason, should be disregarded, this court must give effect to the statute's 'plain meaning.' [Citation.]" *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 218-219.)

In the instant case, the language of the statute is clear: permits must be obtained for the placement or erection of any development, i.e., any solid material or structure. Common sense tells us that greenhouses are solid structures, and therefore fall within the purview of the Coastal Act. Moreover, plaintiffs have not demonstrated any reason, compelling or otherwise, why the plain meaning of section 30106 should be disregarded. Accordingly, we conclude that greenhouses do constitute a development under the Coastal Act for which plaintiffs must obtain the requisite permits.

III

In an attempt to prevail on their civil rights cause of action under 42 U.S.C. section 1983, and in the process to perhaps collect an award for attorney fees, plaintiffs cite numerous consti-

tutional provisions and decisional law with little or no explanation of their applicability. We find these claims to be without merit.

Regarding their claim that application of the revised A-P ordinance constitutes a "taking", we remind plaintiffs that a zoning ordinance may be held unconstitutional and subject to invalidation "only when its effect is to deprive the landowner of substantially all reasonable use of his property." (*Griffin Development Company v. City of Oxnard* (1985) 39 Cal.3d 256, 266; *Agins v. City of Tiburon* (1979) 24 Cal.3d 266, 277.) In our view, plaintiffs have failed to make out even a colorable claim that application of the revised A-P ordinance results in a "taking." (See *Griffin* and *Agins, supra,* for a thorough discussion of the law on this issue.)

Nor have plaintiffs presented any viable argument with respect to their contention that the permit process is violative of the "basic fundamental fairness guaranteed under the due process clause of the United States Constitution. . . . (RB 28) (See *Grupe v. California Coastal Commission* (1985) 166 Cal.App.3d 148 and discussion therein.)

Simiarly, we reject plaintiffs assertions concerning an alleged deprivation of substantive due process. Where a statute or regulation is reasonably related to a legitimate governmental purpose, "limited economic regulation of the use of real property imposed for the public welfare" does not violate substantive due process. (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 409-410.) Suffice it to say, the permit requirements at issue are reasonably related to the legitimate governmental objective expressed in Public Resources Code section 3001, subd. (b), of preserving and protecting the state's natural and scenic resources. (See *Griffin, supra*, 39 Cal.3d 256; *Grupe v. California Coastal Commission, supra*, 166 Cal.App.3d 148 and discussions therein.)

It is well settled that "[t]here is no constitutional right to own property free from regulation. Neither the state nor the federal Constitution guarantees any person absolute liberty of action . . . 'We do not consider lightly the importance of the constitutional guarantee attaching to private ownership and use of real property

. . . However, more than 50 years ago, it was clearly established that property ownership rights, reserved to the individual by constitutional provision, must be subordinated to the rights of society. It is now a fundamental axiom in the law that one may not do with his property as he pleases; his use is subject to reasonable restraints to avoid societal detriment . . . .' [Citations.]" (*Whaler's Village Club v. California Coastal Commission* (1985) 173 Cal.App.3d 240, 253.)

Having concluded that plaintiffs have no cause of action under 42 U.S.C. section 1893, we necessarily reject their claims concerning attorney's fees under section 1988.

Disposition

The judgment below is affirmed insofar as it denies plaintiffs/cross-appellants' claims under The Civil Rights Act and requires a discretionary permit for the construction of additional dwellings on the subject property. In all other respects, the judgment is reversed and the trial court ordered to enter judgment in favor of appellants, the County of Santa Cruz and the California Coastal Commission. The injunction issued by the trial court is dissolved. Each party is to bear their own costs on appeal.

O'Farrell, J.*

I CONCUR:

Agliano, Acting P.J.

* Under assignment by the Chairperson of the Judicial Council

Brauer, J., Concurring:

I join in parts II and III of the opinion.

As to part I, I consider the discussion of contract interpretation in the context of the Parol Evidence Rule to be beside the point even though the case was tried on that theory. Delucchi's position is that he was induced to enter into a Williamson Act agreement by the County's representation that the then-existing zoning would remain in effect during the life of the agreement. Evidence in support of such a contention is not designed to vary or interpret a writing but to establish that the agreement, though clear, is unenforceable because entered into on the basis of either a mutual mistake or a unilateral mistake brought about by the County's fault. (Rest.,2d Contracts, §§ 152, 153.) Such an inducement may always be proved by parol evidence and does not invoke the rules laid down in *Pacific Gas & E. Co.* v. *G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33. (Jefferson, California Evidence Benchbook (2d. ed.), § 32.4.) But the remedy for mistake is rescission (*Guthrie* v. *Times-Mirror Co.* (1975) 51 Cal.App.3d 879, 884), a form of relief Delucchi does not seek as it would avail him nothing.

I would base the decision squarely on *Avco Community Developers, Inc.* v. *South Coast Regional Com.* (1976) 17 Cal.3d 785, 800 which binds us and renders unenforceable a representation such as that found to have been made here. In the light of *Avco*, Delucchi of course cannot have the remedy of reformation which is sometimes available in equity to the innocently mistaken party and is similar in effect to the specific performance he seeks. (Civil Code § 3399; Rest. 2d., Contracts, § 155.)

BRAUER, J.

**Appendix D**

Court of Appeal of the State of California
In and for the
Sixth Appellate District

No. H000161

Superior Court No. 83506

Andrew Delucchi, et al.,
Plaintiff, Respondent and Appellant,

vs.

County of Santa Cruz, et al.,
Defendant, Appellant and Respondent.

[Filed April 30, 1986]

BY THE COURT

The petition for rehearing is denied.

(Agliano, P.J., Brauer, J., and O'Farrell, J. (assigned) participated in this decision.)

Dated April 30, 1986

BRAUER, J., Acting P.J.

**Appendix E**

Order Denying Review

After Judgment by the Court of Appeal

6th District, No. H000161

In the Supreme Court of the State of California

In Bank

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Delucchi et al.

v.

County of Santa Cruz et al.

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[Filed June 18, 1986]

Appellants' petition for review DENIED.

BIRD
Chief Justice

**Appendix F**

California Farm Bureau Federation
1601 Exposition Boulevard
Sacramento, CA 95815
Telephone (916) 924-4000

June 17, 1986

The Honorable Rose Elizabeth Bird
Chief Justice
The Honorable Stanley Mosk
Associate Justice
The Honorable Allen E. Broussard
Associate Justice
The Honorable Cruz Reynoso
Associate Justice
The Honorable Joseph R. Grodin
Associate Justice
The Honorable Malcolm M. Lucas
Associate Justice
The Honorable Edward A. Parnelli
Associate Justice

Supreme Court of the State of California
350 McAllister Street
Room 4250, State Building
San Francisco, California 94102

Re: *Andrew Delucchi and Dorothy G. S. Delucchi v. County of Santa Cruz, California Coastal Commission, et al.*, No. H000161, Santa Cruz Superior Court Nos. 83506 and 82382; Petition for Review of Decision of the Court of Appeal, Sixth Appellate District

Dear Honorable Justices:

The California Farm Bureau Federation, which appeared as Amicus Curiae in this matter before the Court of Appeals for the Sixth Appellate District, wishes hereby to express its suppport for the Petition For Review submitted to this Court by Andrew and Dorothy G. S. Delucchi.

The California Farm Bureau Federation ("Farm Bureau") is a voluntary, non-governmental, nonp-profit California corporation, representing nearly 100,000 member farm families in 56 counties. Its primary purpose is to protect and foster agricultural interests throughout California.

The County of Santa Cruz, defendant, appellant and cross-respondent in this matter, assets in its Answer to Petition for Review that "this case does not present important statutory and constitutional questions of statewide importance." To the contrary, Farm Bureau strongly believes that the decision of the Sixth District Court of Appeals has announced principles of generai applicability concerning the mutuality of rights and obligations created under a Williamson Act contract, and will have an impact upon present and future Williamson Act contracts throughout the State of California.

On behalf of its members statewide, the California Farm Bureau Federation therefore expresses its strong concern and its support for the Petition for Reviews submitted by plaintiffs, respondents and appellants Andrew and Dorothy Delucchi. If review is granted, Farm Bureau will seek permission to file an Amicus Curiae Brief addressing those issues it believes will have a direct and serious impact upon its members.

Very truly yours,

/s/ THOMAS F. OLSON
General Counsel

TFO:CSR/wn
cc: John K. Van De Kamp
Joseph Barbieri
Dwight L. Herr
Dennis J. Kehoe
The Honorable Roland K. Hall
Richard J. Eyman

## Appendix G

### LAND CONSERVATION CONTRACT

THIS CONTRACT, made and entered into this 23rd day of February, 1971, by and between DOROTHY GERTRUDE and SULLIVAN DELUCCHI, hereinafter referred to as "Owner," and the COUNTY OF SANTA CRUZ, a Political Subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Owner is the owner of certain real property in the County of Santa Cruz, which property is presently devoted to agricultural use and is described in Exhibit "A" attached hereto; and

WHEREAS, said property is located in agricultural preserve heretofore established by County; and

WHEREAS, both Owner and County desire to limit the use of said property to agricultural uses and those compatible uses allowed in the Agricultural Preserve (A-P) Zone, in order to discourage premature and unnecessary conversion of such land to urban use, recognizing that such land has substantial public value as open space and that the preservation of such land in agricultural production constitutes an important physical, social, esthetic, and economic asset to County; and

WHEREAS, the parties have determined that the highest and best use of such land during the life of this contract, or any renewal thereof, is for agricultural purposes:

NOW, THEREFORE, the parties, in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom do hereby agree as follows: –

1. The within contract is made and entered into pursuant to the California Land Conservation Act of 1965.

2. During the term of this contract the above-described land shall be used for the commercial production of agricultural commodities and/or those compatible uses allowed in the Agri-

cultural Preserve (A-P) Zone of the County Zoning Ordinance. No structures shall be erected upon said land except such structures as may be incidental to and compatible with such uses.

3. In consideration of the execution hereof by Owner and the execution of similar contracts by other property owners within the same agricultural preserve, County agrees not to authorize any uses, other than those permitted by the County Zoning Ordinance in the Agricultural Preserve (A-P) Zone, during the term of this contract or any renewal thereof. Nothing herein shall prohibit a change of boundaries of said Agricultural Preserve to omit lands not subject to a contract or to include additional lands.

4. In consideration of the execution hereof by County, Owner agrees to restrict his property to those uses authorized in the Agricultural preserve (A-P) Zone. Owner further agrees that he will not convey any part of the above-described property unless any parcel proposed to be conveyed complies in all respects with the provisions of the Agricultural Preserve (A-P) Zone.

5. In the event that an action in eminent domain for the condemnation of any land described herein is hereafter filed by any public agency, or when such land is acquired in lieu of eminent domain for a public improvement, this contract shall be deemed null and void as of the date the action is filed or the land is so acquired, provided that the condemnation of acquisition is of the fee title or other interest less than the fee which would prevent the land from being used for agricultural or compatible uses and provided that the contract shall be null and void only as to land actually so condemned or acquired or as to such land and a remaining portion that is rendered unsuitable for agricultural or compatible uses.

6. This contract shall be effective commencing on the 23rd day of February, 1971, and shall remain in effect for a period of ten (10) years therefrom.

This contract shall be automatically renewed at the end of each year for an additional one (1) year period, thus maintaining the term of the contract at ten (10) years, unless notice of non-renewal is given as provided below.

7. Either party hereto may cause this contract to expire at the end of nine (9) years from the next renewal date by serving a written notice of non-renewal on the other party at least ninety (90) days prior to such renewal date, if Owner is serving notice, and sixty (60) days prior to such renewal date if the County is serving notice.

8. Owner shall not receive any payment from County in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of this contract is the substantial public benefit to be derived therefrom and the advantage which will accrue to Owner in the event of any reduction in the assessed value of said property due to the imposition of the limitations on its use contained herein.

9. The within contract shall run with the land described herein and shall be binding upon the heirs, successors, and assignees of the parties hereto.

10. This contract may not be cancelled except upon a petition by the Owner to the Board of Supervisors of County and provided that such board, after a public hearing held in accordance with the provisions of Section 51284 of the Government Code, finds:

(a) That the cancellation is not inconsistent with the purposes of the California Land Conservation Act of 1965; and

(b) That cancellation is in the public interest.

The existence of an opportunity for another use of the land shall not be sufficient reason for cancellation. A potential alternative use of the land may be considered only if there is no proximate land not subject to a Land Conservation Act contract or agreement suitable for the use to which it is proposed the subject land be put. The uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation. The uneconomic character of the existing use may be considered only if there is no other reason or comparable agricultural use to which the land may be put.

Upon any such cancellation, the landowner shall pay to County an amount equal to fifty percent (50%) of the full market value of

the land when relieved of the restriction, as found by the assessor, multiplied by the latest County assessment ratio published pursuant to Section 401 of the Revenue and Taxation Code when the contract was initially entered into.

The Board of Supervisors of County may waive or defer such payment or any portion thereof provided the Board finds:

(a) It is in the public interest and the best interests of the program to conserve agricultural land that such payment be waived or deferred, and

(b) The reason for the cancellation is an involuntary transfer or involuntary change in the use of the land and the land is not suitable and will not be immediately used for a purpose which produces a greater economic return to the Owner.

The Board of Supervisors of the County may make any such waiver or deferral of payment contingent upon the future use made of the land and its economic return to the landowner for a period not to exceed the unexpired period of the contract, had it not been cancelled, and a lien shall be on the subject land to secure the performance of the act or acts upon which the waiver or deferral is made contingent.

IN WITNESS WHEREOF, the parties hereto have executed the within contract the day and year first above written.

County of Santa Cruz,
a Political Subdivision
of the State of California

By /s/_____
Chairman, Board of Supervisors
County

_____

/s/_____
Owner

productive open space and rural character in the county. (Ord. 1639, 9/21/71; 2450, 6/21/77; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(c) *"AP Agricultural Preserve.* The purposes of the "CA" Zone District shall apply to the "AP" Agricultural Preserve Zone District. The "AP" regulations are designated to apply only to lands located within an agricultural preserve established in accordance with the provisions of the California Land Conservation Act of 1965 as now enacted or as hereafter amended, and which are within the "AP" Zone District as of July 27, 1982. (Ord. 1283, 1/2/68; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(d) *Interpretation of Provisions.* The provisions of this Chapter shall be liberally interpreted insofar as they apply to agricultural pursuits and services and shall not be deemed or construed to interfere with any normal accessory use conducted in conjunction therewith. It is the intention of the county to retain for commercial agricultural production, and to encourage the commercial agricultural use of, lands designated by the Board of Supervisors as Type 1, Type 2, or Type 3 Agricultural Lands on the map entitled "Agricultural Resources" on file with the Planning Department; to provide maximum protection to existing and future agricultural enterprises from restrictions which may be instituted later at the request of future residents; to restrict incompatible development on or adjacent to agricultural land; and to maintain the existing parcel sizes for parcels zoned "CA" and "AP", except where it is clearly demonstrated that any division of such parcels shall not diminish the productivity or in any way hamper or discourage long-term commercial agricultural operations on said parcels or adjoining or nearby parcels. (Ord.

13.10.312 AGRICULTURAL USES.

(a) *Principal Permitted Uses.*

1. The principal permitted use in the Coastal Zone shall be as follows: "CA" and "AP" agricultural pursuits for the commercial cultivation of plant crops, including food, fiber, flower or other ornamental crops and the commercial raising of animals, includ-

ing grazing and livestock production, and apiculture and accessory uses and structures; "A": agricultural pursuits, including the noncommercial or commerical cultivation of plant crops or raising of animals, including apiculture, single-family residential and accessory uses and structures, excepting those agricultural activities listed as Discretionary Uses. (Ord. 1283, 1/2/68; 1703, 5/18/72; 2769, 9/11/79; 2622, 1/23/79; 2771, 9/11/79; 3015, 12/2/80; 1806, 12/12/72)

2. Principal permitted uses are all denoted as uses requiring a Level IV or lower approval or as otherwise denoted with the letter "P" in the Agricultural Use Chart contained in paragraph (b) below. In the Coastal Zone, actions to approve uses other than principal permitted uses are appealable to the Coastal Commission in accordance with the provisions of Chapter 13.20 of the County Code relating to Coastal Zone approvals, and in some cases, as specified in Section 13.20, any development is appealable. (Ord. 1283, 1/2/68; 1703, 5/18/72; 2769, 9/11/79; 1283, 1/2/68)

(b) *Allowed Uses.* The uses allowed in the agricultural districts shall be as provided in the Agricultural Uses Chart below. A discretionary approval for an allowed use in known as a "Use Approval" and is given as part of a "Development Permit" for a particular use. The type of permit processing review, or "Approval Level", required for each use in each of the agricultural zone districts is indicated in the chart. The processing procedures of Development Permits and for the various Approval Levels are detailed in Chapter 18.10 PERMIT AND APPROVAL PROCEDURES. The Approval Levels given in this chart for structures incorporate the Approval Levels necessary for processing a building permit for the structure. Higher Approval Levels than those listed in this chart for a particular use may be required if a project requires other concurrrent Approvals, according to Section 18.10.123. All Level V or higher Approvals in the "CA" and "AP" zone districts are subject to the special findings required by Section 13.10.314(a) in addition to those required in Section 18.10.230.

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## AGRICULTURAL USES CHART

### "CA", "A", AND "AP" ZONE DISTRICTS

Key:

P = Principal permitted use (see Sec. 13.10.312(a)); no use approval necessary if "P" appears alone

1 = Approval Level I (administrative, no plans required)

2 = Approval Level II (administrative, plans required)

3 = Approval Level III (administrative, field visit required)

4 = Approval Level IV (administrative, public notice required)

5 = Approval Level V (public hearing by Zoning Administrator required)

6 = Approval Level VI (public hearing by Planning Commission required)

7 = Approval Level VII public hearing by Planning Commission and Board of Supervisors required)

— = Use not allowed

| USE | CA | A | AP |
|---|---|---|---|
| Agricultural activities, including but not limited (unless otherwise specified) to: | | | |
| Apiculture (beekeeping) | P | P | P |
| Berry and other vine crops | P | P | P |
| Commercial dairying, subject to the provisions of Section 16.22.060 | 3 | 5 | 3 |
| Field crops, including hay, grain, seed, and turf crops | P | P | P |
| Livestock raising for food, fiber or animal production, including rabbits and other small animals under 100 per acre | P | P | P |
| Livestock raising involving hog farming or small animals over 100 per acre, subject to the provisions of Section 16.22.060 | 5 | 5 | 5 |
| Nursery crops limited to open field grown ornamental plants, flowers and Christmas trees | P | P | P |
| Nursery crops, outdoor container grown, covering an area larger than 1 acre | 5 | 5 | 5 |
| Orchards, including tree fruit and nut crops | P | P | P |
| Poultry and other fowl raising, including egg production, under 100 birds per acre (see also "Barn" below) | P | P | P |

| USE | CA | A | AP |
|---|---|---|---|
| Poultry and other fowl raising involving more than 100 birds per acre | P | 5 | P |
| Row crops, including fruit and vegetable raising | P | P | P |
| Agricultural service establishments, such as farm chemical suppliers or custom work operators, subject to the provisions of Section 13.10.633 | 5 | 5 | 5 |
| Aquaculture | 5 | 5 | 5 |
| Barns, corrals or pens used for animal husbandry, subject to the provisions of Section 16.22.060 | 3 | 3 | 3 |
| Caretaker's quarters, permanent, subject to the provisions of Section 13.10.635 | 5 | 5 | 5 |
| Commercial boarding of animals, subject to the provisions of Section 13.10.641(b) | 5 | 3 | 5 |
| Dwelling unit, one detached single-family per parcel, subject to the provisions of Section 13.10.314 | | | |
| Inside the Coastal Zone | 5 | 3 | 5 |
| Outside the Coastal Zone | 3 | 3 | 3 |
| Dwelling Unit, one detached single family for the owner, lessee or an employee of the owner or lessee of the land, not to exceed one dwelling unit for each forty acres of total site area, subject to the provisions of Section 13.10.314 | | | |
| Inside the Coastal Zone | — | — | 5 |
| Outside the Coastal Zone | — | — | 3 |
| Dwelling units, accessory to the main dwelling unit for persons employed on the premises and relatives of the property owner or lessee, limited to one such living unit for each forty acres of total site area with a maximum of five such dwelling units, whichever is less, subject to the provisions of Section 13.10.314 | | | |
| Inside the Coastal Zone | — | — | 5 |
| Outside the Coastal Zone | — | — | 3 |
| Dwelling units, dwelling groups subject to the provisions of Section 13.10.313(f) and .314 | | | |
| 2-4 Units | 5 | 5 | 5 |
| 5-19 Units | 6 | 6 | 6 |
| 20+ units | 7 | 7 | 7 |

| USE | CA | A | AP |
|---|---|---|---|
| Energy facilities, community, subject to the provisions of Section 13.10.661 and .700-E (definition) | 5 | 5 | 5 |
| Facilities for fish and wildlife enhancement and preservation | P | P | P |
| Farm labor housing subject to Section 13.10.635 | | | |
| 1-4 Units | 5 | 5 | 5 |
| 5-19 Units | 6 | 6 | 6 |
| 20+ Units | 7 | 7 | 7 |
| Farm outbuildings and other accessory structures for storage or equipment | 2 | 2 | 2 |
| Fences | P | P | P |
| Fire protection facilities | — | 5 | — |
| Flood control works, including channel rectification and alteration; dams, canals and aqueducts of any public water project | 5 | 5 | 5 |
| Foster homes for 6 or fewer children, not including those of the proprietary family (see Section 13.10.700-F definition) | P | P | P |
| Foster homes for seven or more children, not including those of the proprietary family (see section 13.10.700-F definition) | 5 | 5 | 5 |
| Fuel storage tanks and pumps | 2 | 2 | 2 |
| Greenhouse structures, as accessory structures, under 500 square feet area | 2 | 2 | 2 |
| Greenhouse structures, over 500 square feet in area, subject to the provision of Section 13.10.636 | 5 | 5 | 5 |
| Greenhouse replacement, reconstruction or structural alteration, pursuant to Section 13.10.636(b) and (c) | 2 | 2 | 2 |
| Habitable accessory structure, subject to the provisions of Section 13.10.611 and 612 | 4 | 4 | 4 |
| Home occupations subject to the provisions of Section 13.10.613 | P | P | P |
| Kennels, commercial or private, for five or more dogs or cats over the age of four months subject to the provisions of 13.10.323 | 5 | 5 | 5 |

| USE | CA | A | AP |
|---|---|---|---|
| Labor camps subject to the provisions of Section 13.10.635 | | | |
| 1-4 Units | 5 | 5 | 5 |
| 5-19 Units | 6 | 6 | 6 |
| 20+ Units | 7 | 7 | 7 |
| Lumber Mills | — | 5 | — |
| Mobilehomes, as farm labor housing, subject to the provisions of Section 13.10.635 | | | |
| 1-4 Units | 5 | 5 | 5 |
| 5-19 Units | 6 | 6 | 6 |
| 20+ Units | 7 | 7 | 7 |
| Mobilehome, as a single-family dwelling unit, subject to the provisions of Section 13.10.682 | | | |
| Inside the Coastal Zone | 5 | 4 | 5 |
| Outside the Coastal Zone | 4 | 4 | 4 |
| Mobilehome, for temporary occupancy as a caretaker's or watchman's quarters subject to the provisions of Section 13.10.631 | 3 | 3 | 3 |
| Mushroom farms and other agricultural within structures subject to the provisions of Section 13.10.634 | 5 | 5 | 5 |
| Offices operated in conjunction with an allowed use | 3 | 3 | 3 |
| Processing or cold storage facilities under 5,000 square feet for product grown on-site subject to the provisions of Section 13.10.632 | 5 | 5 | 5 |
| Public utility facilities; energy facilitites (see Sec. 13.10.700-E definition) | — | 5 | — |
| Reservoirs or ponds | 3 | 3 | 3 |
| Riding academies or public stables, subject to the provisions of Section 16.50.060 | 5 | 5 | 5 |
| Sheds, for packing, drying or storage or product grown on-site* under 200 square feet | 3 | 3 | 3 |
| Signs in conjunction with principal permitted uses as described in Section 13.10.580(a) and (b) | P | P | P |
| Signs in conjunction with non-principal permitted uses as described in Section 13.10.580(c) and (d) | 2 | 2 | 2 |

* For purposes of this section, "on-site" shall mean on the parcel on which the use is located, plus any other parcel(s) owned, leased and/or rented by the farm operator.

| USE | CA | A | AP |
|---|---|---|---|
| Stands for the Display and sale of agricultural commodities proeduced on-site* | 2 | 2 | 2 |
| Veterinary offices and animal hospitals subject to the provisions of Section 13.10.642 | 5 | 5 | 5 |
| Water pollution control facilities for agricultural purposes constructed to comply with waste discharge requirements or other orders of the Regional Water Quality Control Board, or erosion control facilities constructed to comply with county ordinances | 3 | 3 | 3 |
| Water wells, storage tanks and distribution lines, well covers and small pump houses utilized strictly for on-site agriculturally related activities | 1 | 1 | 1 |
| Wineries of no more than 12,500 gallons annual production subject to the provisions of Section 13.10.637 | 3 | 3 | 3 |
| Wineries over 12,500 gallons annual production subject to the provisions of Section 13.10.637 | 5 | 5 | 5 |
| Zoos and natural science museums | — | 5 | — |

* For purposes of this section, "on-site" shall mean on the parcel on which the use is located, plus any other parcel(s) owned, leased and/or rented by the farm operator.

## 13.10.313 DEVELOPMENT STANDARDS

(a) *Site and Structural Dimensions.* The following, site area per dwelling unit, site width, frontage, yard dimensions, and building height limit shall apply to all agricultural zone districts. On pre-existing parcels less than 2.5 acres in size, the size and structural dimensions of the residential districts as indicated in Section 13.10.323(b), shall apply, based on the pre-existing parcel size.

**AGRICULTURAL SITE AND STRUCTURAL DIMENSIONS CHART**

| Designation | Parcel Size | Width | Frontage | Yard Front | Set Back Side | Rear | Max. Bldg. Ht. |
|---|---|---|---|---|---|---|---|
| A | Less than 5 ac | 100′ | 60′ | 20′ | 20′ | 20′ | 40′ |
| A | 5 ac or more | 300′ | 100′ | 20′ | 20′ | 20′ | 20′ |
| CA | (All) | 300′ | 100′ | 20′ | 20′ | 20′ | 40′ |
| AP | (All) | 300′ | 100′ | 20′ | 20′ | 20′ | 40′ |

(b) *Distance Between Structures.* Incidental and accessory structures may be attached to and have a common wall with a main structure on a site or may be connected with a main structure by a breezeway, provided that a structure housing livestock shall not be attached to a structure used for human habitation. Where there is more than one structure on a site, the minimum distance between a structure used for human habitation and another structure shall be ten feet. The miminum distance between dwelling units shall be 20 feet. In either case, the minimum distance between structures shall be increased one foot for every two feet of height above the lowest 16 feet of height of either structure. The minimum distance between a structure used for human habitation and a structure housing livestock, shall be 50 feet.

(c) *Minimum Parcel Size.*

1. *"A" District.* The minimum average parcel size in net developable acres for new parcels created in the "A" Zone District outside the Urban Services Line (USL) shall be within

the range of 2½-20 or 10-40 acres per dwelling unit and shall be consistent with the requirements of the General Plan, the Local Coastal Program Land Use Plan and Chapter 13.14 of the County Code pertaining to Rural Residential Density Determinations. Land divisions shall not be allowed within the "A" zone District on properties within the USL.

2. *"CA" District.* Parcels within the "CA" Zone District shall not be divided except for exclusive agricultural purposes pursuant to Section 13.10.315.

3. *"AP" DISTRICT.* Parcels within the "AP" Zone District shall not be divided except for exclusive agricultural purposes pursuant to Section 13.10.315.

(d) *Buffer Requirements.* Nonagricultural uses involving habitable spaces including residential development, farm labor housing, commercial or industrial establishments, etc., which are located on or adjacent to parcels zoned Commercial Agricultural "CA", or Agricultural Preserve "AP", shall provide a buffer setback in accordance with the provisions of Section 16.50.095.

(e) *Dwelling Group Densities.*

1. *"A" District.* Dwelling groups within the "A" Agriculture Zone District may be allowed at a density per dwelling unit pursuant to Chapter 13.14 of the County Code pertaining to Rural Residential Density Determinations.

2. *"CA" District.* Dwelling groups within the "CA" Commercial Agricultural Zone District may be allowed at a density of 40 acres per dwelling unit.

3. *"AP" District.* Dwelling groups within the "AP" Agriculture Preserve Zone District may be allowed at a density of 40 acres per dwelling, with a maximum of five dwelling units.

(f) *Residential Uses on Coastal Zone Nonprime Agricultural Land.* Building permits for residential uses on parcels designated in the Local Coastal Program Land Use Plan as agricultural land use and not as prime agricultural land shall be issued only upon documentation that:

1. Residential use of the parcel will not conflict with on-site or adjacent agricultural activities; and

2. The building site has approved agricultural buffer setbacks; and

3. The residents and owners of the subject parcel have executed a binding hold-harmless covenant with adjacent agricultural operators and owners which shall run with the land and be recorded prior to occupancy.

The Agricultural Policy Advisory Commission shall make the determination that these conditions have been met.

(g) *Applicability of Other Regulations.* The regulations of Section 13.10.510, pertaining to minimum parcel sizes, and of Section 13.10.671, pertaining to uses of non-developable lands, shall also apply to lands within the "CA", "A", and "AP" Zone Districts.

## 13.10.314 REQUIRED SPECIAL FINDINGS FOR "CA" AND "AP" USES.

(a) *All Uses.* For parcels within the "CA" Commercial Agriculture and "AP" Agricultural Preserve Zone Districts, the following special findings must be made in addition to the findings required by Chapter 18.10 in order to approve any discretionary use listed under Section 13.10.312 which requires a Level V or higher Approval:

1. That the establishment or maintenance of this use will enhance or support the continued operation of commercial agriculture on the parcel and will not reduce, restrict or adversely affect agricultural resources, or the economic viability of commercial agricultural operations, of the area.

2. That the use or structure is ancillary, incidental or accessory to the principal agricultural use of the parcel or that no other agricultural use is feasible for the parcel.

3. That single-family residential uses will be sited to minimize conflicts, and that all other uses will not conflict with commercial agricultural activities on site, where applicable, or in the area.

4. That the use will be sited to remove no land from production (or potential production) if any nonfarmable potential building site is available, or is this is not possible, to remove as little land as possible from production.

(b) *Residentail Uses in the Coastal Zone.* For parcels within the "CA" Commercial Agricultural and "AP" Agricultural Preserve Zone Districts in the Coastal Zone, the following special findings shall be made in addition to those required by Chapter 18.10 and paragraph (a) above in order to approve any discretionary residential use including a single family residence, a permanent caretaker's residence, or habitable accessory structure. These findings shall be based upon a review and determination by the Agricultural Policy Advisory Commission.

1. That the parcel is less than one acre in size; or that the parcel has physical contraints (such as adverse topographic, geologic, hydrologic or vegetative conditions) other than size which preclude commercial agricultural use; or that the residential use will be ancillary to commercial agricultural use of the parcel based upon the fact that either:

(i) The farmable portion of the parcel, exclusive of the building site, is large enough in itself to constitute a minimum economic farm unit for three crops, other than greenhouses, suited to the soils, topography and climate of the area; or

(ii) The owners of the subject parcel have a long-term binding arrangement for commercial agricultural use of the remainder of the parcel, such as an agricultural easement.

2. That the residential use will meet all the requirements of Section 16.50.095 pertaining to agricultural buffer setbacks.

3. That the owners of the parcel have executed binding hold-harmless covenants with the owners and agricultural operators of adjacent agricultural parcels. Such covenants shall run with the land and shall be recorded prior to issuance of the Development permit. (Ord. 2622, 1/23/79; 2771, 9/11/79; 3015, 12/2/80; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

## 13.10.315 "CA" AND "AP" LAND DIVISION CRITERIA

(a) *All Parcels in the "CA" and "AP" Zone District.*

1. All parcel divisions in the "CA" or "AP" Zone Districts shall be subject to a public hearing and approval at approval Level VII pursuant to chapter 18.10.

2. All proposed parcel divisions within the "CA" or "AP" Zone Districts shall be reviewed by the Agricultural Policy Advisory Commission for a recommendation for approval or denial of the proposed division, and for a determination of the ability to make the special findings required by this section, the potential for conflicts from the proposed division, and where appropriate, the minimum parcel size necessary to allow for economic farming of the parcels.

3. No parcel division shall be permitted in the "CA" or "AP" Zone Districts for the purpose of using the new parcel(s) for nonagricultural uses, or for the purpose of dividing off land which is not usable for agriculture.

**Appendix I**

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Attorneys for Andrew Delucchi, et al.

In the Court of Appeal
of the
State of California

Sixth Appellate District

No. H000161
(Santa Cruz County, Superior Court
No. 83506 and 82382

Andrew Delucchi and Dorothy G. S. Delucchi,
Plaintiffs, Respondents,
Cross-appellants and Appellants,

vs.

County of Santa Cruz,
California Coastal Commission,
Defendants, Appellants,
Cross-respondents and Respondents.

---

[Filed July 09, 1986]

## NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI, Appellants, (Plaintiffs, Respondents, and Cross-appellants below) hereby Appeal to the United States Supreme Court the following identified final Judgment, in its entirety.

This Appeal is taken from the Judgment (Opinion) of the Court of Appeal of the State of California, Sixth Appellate

District that was entered (filed) with the Court of Appeal on April 3, 1986; a Petition for Rehearing was denied by the Court of Appeal on April 30, 1986; and a Petition for Review was denied by the California Supreme Court on June 18, 1986, after which the Judgment of the Court of Appeal of the State of California, Sixth Appellate District, became final (except for this Appeal) and from which this Appeal to the United States Supreme Court is taken.

This Appeal is taken pursuant to 28 United States Codes, Section 1257(2) and 1257(3), and each of the foregoing subsections.

DATED: July 8, 1986.

ADAMS, LEVIN, KEHOE,
BOSSO, SACHS, & BATES,
A Professional Corporation

By: /s/ DENNIS J. KEHOE
DENNIS J. KEHOE
Attorneys of Record for
ANDREW and DOROTHY G. S.
DELUCCHI
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Santa Cruz, California 95060
Telephone: (408) 426-8484

## DECLARATION OF SERVICE BY MAIL

Case: *Andrew Delucchi vs. County of Santa Cruz*
Santa Cruz Superior Court Action No. 83506
Court of Appeal Civil No. H000161

I declare that:

I am employed in the County of Santa Cruz. I am over the age of 18 years and not a party to the above entitled action; my business address is 323 Church Street, Santa Cruz, California.

On the 8th day of July, 1986, I served the within **Notice of Appeal to the Supreme Court of the United States** in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Santa Cruz, California, addressed as follows:

One copy to Attorney for Appellant California Coastal Commission:
Joseph Barbieri,
Attorney General
6000 State Building
350 McAllister Street
San Francisco, CA 94102

One Copy to Attorneys for Amicus Curiae California Farm Bureau Federation:
Thomas Olson
Carolyn Richardson
California Farm Bureau Federation
1601 Exposition Blvd.
Sacramento, CA 95815

One copy to Attorney for Appellant County of Santa Cruz:
Dwight Herr, County Counsel
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

One copy to Trial Court:
Richard Bedal, Court Clerk
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

One Copy to Trial Judge:
Honorable Roland K. Hall
c/o 701 Ocean Street
Santa Cruz, CA 95060

I declare, under penalty of perjury, that the foregoing is true and correct. Executed at Santa Cruz, California on July 8, 1986.

/s/ DENNIS J. KEHOE
Dennis J. Kehoe

Andrew Delucchi, et al.,
Appellants,

vs.

County of Santa Cruz, et al.,
Appellees.

---

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ } ss.:

DENNIS J. KEHOE, being first duly sworn, deposes and says: I am a citizen of the United States and a resident of the county aforesaid. I am over the age of 18 years and not a party to the within entitled action. My business address is 323 Church Street, Santa Cruz, California 95060. On July 8, 1986, I served the within Appellants' **Notice of Appeal to the Supreme Court of the United States** on the Appellees in said action by placing Six copies thereof enclosed in a sealed envelope postage fully prepaid thereon, in the United States Post Office mail box at Santa Cruz, California, the envelopes respectively, addressed as follows:

One copy to Attorney for Appellant California Coastal Commission:
Joseph Barbieri,
Attorney General
6000 State Building
350 McAllister Street
San Francisco, CA 94102

One Copy to Attorneys for Amicus Curiae California Farm Bureau Federation:
Thomas Olson
Carolyn Richardson
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1601 Exposition Blvd.
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One copy to Attorney for Appellant County of Santa Cruz:
Dwight Herr, County Counsel
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

One copy to Trial Court:
Richard Bedal, Court Clerk
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

One Copy to Trial Judge:
Honorable Roland K. Hall
c/o 701 Ocean Street
Santa Cruz, CA 95060

That affiant makes this service for Andrew Delucchi and Dorothy G. S. Delucchi, Attorney for Appellants herein. That there is delivery service by United States mail at the place so addressed or there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ DENNIS J. KEHOE
Dennis J. Kehoe

On July 8, 1986, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Dennis J. Kehoe, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

(SEAL)

/s/ DIANNA L. COOPER
Notary Public in and for said
County and State

Supreme Court, U.S.
FILED
AUG 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-109

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
*Appellants,*

v.

THE COUNTY OF SANTA CRUZ and THE CALIFORNIA COASTAL COMMISSION,
*Appellees.*

## MOTION TO DISMISS OR AFFIRM

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No. 86-109

# In the Supreme Court

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OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
*Appellants,*

v.

THE COUNTY OF SANTA CRUZ and THE CALIFORNIA COASTAL COMMISSION,
*Appellees.*

## MOTION TO DISMISS OR AFFIRM

The California Coastal Commission moves to dismiss or affirm this appeal on the grounds that the judgment rests on independent and adequate state law grounds, and that the federal question is not ripe for decision.

## STATEMENT OF FACTS

In 1982 Santa Cruz County adopted a local coastal program (Cal. Pub. Resources Code §§ 30500-525), certified by the California Coastal Commission, in which the County required that persons in the coastal zone obtain coastal permits to build structures such as dwellings and greenhouses. (Jurisdictional Statement ("JS") at A-27.) The appellants, Andrew and Dorothy Delucchi, had entered a Land Conservation contract (Cal. Gov. Code §§ 51200-95) with the County in 1971 under which they obtained a lower tax rate in exchange for agreeing to keep their land in agricultural production. (*Id.* at A-26 to A-29.) The Delucchis claim that this contract also guaranteed that the zoning then in effect would remain in effect for the life of the contract,

and that the County and the Commission violated various federal and State constitutional provisions when they changed the construction of dwellings and greenhouses from a permitted use under the 1971 zoning to a discretionary use under the newly-enacted local coastal program. (*Id.*)

Neither the County nor the Commission have ever denied the Delucchis a discretionary permit to construct dwellings or greenhouses. (Reporter's Transcript (RT) at 76, 83.)

## ARGUMENT

### I

### BECAUSE, AS A MATTER OF STATE CONTRACT LAW, THE COUNTY WAS NOT CONTRACTUALLY BOUND TO FREEZE ZONING, THERE IS NO BASIS FOR A CLAIM THAT CONTRACT RIGHTS HAVE BEEN "TAKEN" OR IMPAIRED

The necessary premise of the Delucchis' action is their claim that the County was contractually bound under the Delucchis' land conservation contract to freeze the 1971 zoning for the life of the contract. The California Court of Appeal, applying traditional principles of state contract law, rejected this premise by finding that the contract did not in fact guarantee the Delucchis that the original zoning would not be changed for the life of the contract. (JS at A-30 to A-33.) Because the County was not contractually bound to freeze zoning and there was consequently no basis upon which to claim that contract rights had been "taken"or impaired, the Court of Appeal's finding provides an independent and adequate non-federal ground upon which to dismiss this appeal. (See *Enterprise Irrigation District v. Farmers Mutual Canal Co.* (1917) 243 U.S. 157, 164.) Moreover, the Court of Appeal found that, even had there been such a zoning contract, it would have constituted an unlawful and unenforceable contracting away of the police power under California law. (JS at A-34 to A-35.) This is an additional independent and adequate non-federal ground upon which to dismiss the appeal.

## II

## THE APPEAL SHOULD BE DISMISSED BECAUSE THE DELUCCHIS HAVE NEVER BEEN DENIED A COASTAL PERMIT

Since the County's enactment of its local coastal program, the Delucchis have not applied for, and consequently have never been denied, a coastal permit to construct dwellings or greenhouses. (RT at 76, 83.) Their constitutional claims of "taking" are therefore premature. (E.g., *MacDonald, Sommer and Frates v. Yolo County* (1986) 54 U.S.L.W. 4782, 4784-85; *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260.)

## CONCLUSION

The California Coastal Commission respectfully requests that the Court dismiss the appeal for lack of jurisdiction and want of a substantial federal question, or alternatively, deny issuance of a writ of certiorari.

Dated: August 18, 1986

Respectfully submitted,

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Supreme Court, U.S.
FILED
AUG 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-109

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
*Appellants,*

VS.

COUNTY OF SANTA CRUZ,
CALIFORNIA COASTAL COMMISSION, *et al.*,
*Appellees.*

**On Appeal From The**
**Court Of Appeal Of The State Of California**
**Sixth Appellate District**

## MOTION TO DISMISS

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For the reasons set forth below, appellee, County of Santa Cruz, pursuant to Rule 16.1(b) and (c) of the Rules of the Supreme Court of the United States, moves the Court to dismiss the appeal. If the appeal is treated as an application for Writ of Certiorari, the writ should be denied.

## I

## STATEMENT OF THE CASE

This is an appeal from a judgment of the California Court of Appeal, Sixth Appellate District[1], which held:

1. A contract entered into between the appellants and appellee County of Santa Cruz pursuant to State law[2] granted appellant tax relief in consideration for the appellants contractually restricting the use of their land for agricultural and compatible uses for a minimum term of ten years; and the contract did not prohibit the County from modifying the agricultural zoning regulations applicable to the property when implementing the California Coastal Act so as to require discretionary permits for additional single family dwellings and new agricultural structures on the property.

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[1] The decision of the California Court of Appeal, Sixth Appellate District, is reported at 179 Cal.App.3d 814, 225 Cal.Rptr.43, and is set forth at pages A-26 through 39 of the Appellant's Appendix to Jurisdictional Statement (hereinafter "D. App.").

[2] The contract was authorized by Article XXVIII of the California Constitution and the Williamson Act, also known as the Land Conservation Act of 1965, Government Code Sections 51200-51295).

2. Even if the contract could be interpreted as urged by the appellants to include a promise by the County not to change the agricultural zone regulations on the property during the term of the contract, the contract would be invalid as an attempt by the County to surrender its future right to exercise the police power.

The facts underlying the appeal are as follows:

The appellants are the owners of approximately 163 acres of land in the California Coastal Zone bordering the residential community of La Selva Beach in Santa Cruz County. D. App. A-26. The property is near Manresa State Beach and Monterey Bay. (Appellee's Exhibit O admitted in evidence in the trial court, Land Use Map attachment). The property has been devoted to irrigated farming use since the 1930's. (Reporter's Transcript [R.T.] page 77).

On February 23, 1971, appellants and appellee County of Santa Cruz entered into a contract pursuant to the Williamson Act (Government Code Sections 51200-51292) wherein it was agreed that the property would be restricted to agricultural and compatible uses. D. App. A-26. Thereafter, the County placed the subject property into an "Agricultural Preserve" (A-P Zone). The A-P Zone in effect at the time the contract was executed authorized multiple single-family dwellings and accessory agricultural structures as permitted uses, i.e., uses allowed without the need for a discretionary permit. D. App. A-26.

On November 7, 1972, the California Coastal Act (now codified in Public Resources Code Sections 30000, et seq. ) was adopted by statewide voter initiative. Pursuant to the mandates of the Coastal Act,

as revised by the State Legislature, appellee County of Santa Cruz was required to adopt a Local Coastal Program (LCP) which conformed to the policies of the Coastal Act, and which provided for the County to assume jurisdiction for issuing Coastal Act permits. In 1982, as part of the implementation of its LCP, County adopted new zoning ordinances, including a revised A-P Zone applicable to the subject property. Under this revised A-P Zone, a discretionary permit, including the Coastal Act approval, is required to be obtained from the County for the construction of additional dwelling units and for new agricultural structures. D. App. A-26 and A-27.

Appellant Andrew Delucchi testified at the trial in 1982 as to alleged conversations he had with the then County Tax Assessor and the then County Planning Director eleven years earlier, prior to the execution of the contract, regarding Williamson Act contracts. He asserted that it was orally represented to him that not only would the property owner receive tax benefits but that the uses allowed by the then existing agricultural zoning regulations would be guaranteed during the term of any Williamson Act contract[3]; and appellants would therefore be able to construct houses for themselves and their two daughters and construct

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[3] At the trial, Mr. Delucchi asserted that they did not even consider the tax break when they entered into the contract. R.T. page 74. However, on cross-examination, Mr. Delucchi stated that while he talked to the Planning Director once regarding the Williamson Act Contract, he talked to members of the Tax Assessor's Office on several occasions. R.T. pages 63, 64, 65 and 79. Delucchis also filed their application for the Williamson Act Contract on the deadline date (i.e., December 31) indicated by the County's notice to interested parties for obtaining a tax benefit for the subsequent year. R.T. pages 137, 138 and 187.

various agricultural structures including greenhouses without any discretionary permits. R.T. pages 41 and 42 and Clerk's Transcript (C.T.) pages 3 and 4. The written documentation submitted at trial indicated that property tax assessment stabilization was the reason presented to interested persons by the County for entering into such contracts. Appendix to County of Santa Cruz's Motion to Dismiss (hereafter "S.C. App.") A-1 through A-4 (Defendant's Exhibits 'J' and 'K').

After execution of the contract, appellants continued the agricultural use of the property and received substantial reductions of taxes pursuant to the provisions of the Williamson Act contract. R.T. page 155. The valuation of the subject property for property tax purposes was reduced from $316,900.00 to $143,000.00 when the contract was executed. C.T. pages 352, 353 and 354.

In addition, after the execution of the contract, appellants applied for and received discretionary permits from the California Coastal Commission to build two additional dwellings on the subject property for their daughters[4]. C.T. pages 3[illegible] and 342. Building permits were issued by appellee County, and the two houses were constructed by the appellants. R.T. page 75.

In addition, an application for a discretionary use permit to construct twelve greenhouses and accessory buildings on the subject property was approved with conditions by appellee County of Santa Cruz in 1980.

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[4] The site already contained four permanent employee residences, a duplex and house for seasonal farm laborers, and accessory agricultural outbuildings. C.T. page 346.

C.T. pages 339 through 341. The applicant on behalf of the appellants considered the conditions too burdensome, but neither the appellants nor the applicant on their behalf exercised their right to appeal any of the conditions attached to the permit to the governing body of the appellee, and no application was made to the Coastal Commission for a Coastal permit for the greenhouses. R.T. pages 126-128. The use permit approval was allowed to expire by the applicant and the appellants. R.T. page 128. No other applications have been made by the appellants for any additional dwellings or agricultural structures or for any other use on the subject property. R.T. pages 75, 76 and 85.

## II

## ARGUMENT

### A. The Appeal Herein Should Be Dismissed For Failure To Present A Substantial Federal Question.

The appeal does not present a substantial federal question either in terms of its effects on the appellants nor in terms of its application to others. The question raised in this case is whether the appellants are required to obtain a discretionary permit approval for multiple single-family dwellings and for new agricultural structures in the same manner as everyone else in the California Coastal Zone or whether the provisions of the Williamson Act contract executed in 1971 exempt appellants from those general requirements[5].

---

[5] As stated in the Petition for Review filed by appellants with the California Supreme Court:

> "Shortly after this contract between the County and landowner was executed, the County changed its Williamson Act

Appellants have not shown that they have been prohibited in any way from continuing to utilize the subject property for agricultural uses or from carrying out their original intended plans for the property. As indicated hereinabove and as noted in the California Court of Appeals' opinion, appellants received coastal permits and constructed two additional single-family homes on the subject property for their daughters, and appellants have never applied for a permit to construct an additional dwelling for themselves on the subject property. Inasmuch as the existing agricultural zoning regulations have a density standard of one dwelling unit per 40 acres[6] and the subject property is in excess of 160 acres, there is no reason to assume that appellants would be denied any such permit if they applied. R.T. pages 135 and 136.

As to the appellants' claim that the revised County zoning regulations constitute a "taking" of their prop-

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contracts and no longer used the Ag Preserve Zone as enacted by Ordinance No. 1283. Consequently, at the present time, there are only four owners in all of Santa Cruz County that have this type of Williamson Act contract." (Page 6 of Petition for Review, lines 21-26).

The appellants were the only one of the four such owners to challenge the revision of the agricultural preserve zone regulations adopted by the County to implement the California Coastal Act.

[6] The agricultural zoning in effect at the time of the execution of the Williamson Act provided for a density standard of one dwelling unit per 10 acres. Appellants, through their attorney, expressly stated in writing to the governing body of the appellee County at the time the ordinance was being considered to revise the agricultural preserve zone regulations that they did not object to the change in the density standard. C.T. page 256.

erty, it is apparent from this Court's decision in *Penn Central Transportation Company v. New York City* (1978) 438 U.S. 1104, 57 L.Ed.2d 631, 98 S.Ct. 2646 that the Court of Appeals' characterization is correct that appellants have "failed to make out even a colorable claim for a taking". D. App. page A-37. In the *Penn Central* case, this Court upheld additional regulatory procedures made applicable to existing uses and noted that if such procedures actually resulted in a denial of any proposed use then the property owner would have a judicial remedy to seek review of such a denial. It is further noted in the *Penn Central* case that the new regulations allowed appellants therein to continue to use the property as precisely as it had been used for the prior 65 years, i.e., as a railroad terminal. Similarly, in this case, the revised agricultural zone regulations of appellee County of Santa Cruz allow appellants to continue the agricultural use of their property to which it has been devoted since the 1930's[7]. R.T. page 77. As indicated above, appellants have never been denied any use for which they have made application, and judicial review is available to review any action on a permit application in the future.

**B. There Are No "Special And Important Reasons" For Granting Review By Writ Of Certiorari.**

Review by this Court on Writ of Certiorari is not a matter of right and is only granted when there "are special and important reasons therefor". U.S. Sup.Ct. Rule 17. Specific reasons include: (a) a conflict

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[7] The California Coastal Act also expressly recognizes the right to continue pre-existing uses. California Public Resources Code Section 30608.

between a decision of a state court of last resort on a federal question with the decision of another state court of last resort or of a federal court of appeals, or (b) when a state court has decided an important question of federal law which has not been, but should be decided by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court. None of these reasons nor any other persuasive reasons are present herein.

Issues raised by petition for certiorari as well as in an appeal must also be important to the public and not just to the parties. *NLRB v. Pittsburgh S.S. Company* (1951) 340 U.S. 498, 95 L.Ed. 479, 71 S.Ct. 453; *Rice v. Sioux City Memorial Park Cemetery, Inc.* (1955) 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614.

However, as indicated hereinabove, only four property owners entered into Williamson Act contracts at a time when the County's Agricultural regulations allowed multiple single-family dwellings and various agricultural structures without a discretionary permit. Appellants were the only one of the four such property owners who challenged the revision of the Agricultural Preserve Zone District regulations which required them to obtain discretionary permit approvals in the same manner as similarly situated property owners. Thus, this matter is only important to the appellants.

Moreover, there is no important question of federal law to be decided in this case. The California Court of Appeals' decision reviews in detail the provisions of the Williamson Act contract in question and appropriately concludes that the contract could not reasonably be interpreted under State law as a promise by the County not to change the then existing zoning

regulations, but instead, the contract is worded to carry out the scheme of the Williamson Act to grant property tax relief to a landowner in exchange for their contractual agreement to restrict the use of their land to agricultural and compatible uses. D. App. A-32 through A-34.

In questions concerning alleged impairment of contract and violation of other constitutional rights, this Court has stated that it may independently make an appraisal of the applicable State laws and decisions of its courts but that respectful consideration and great weight is to be given to the views of the State's highest courts. *Indiana ex. rel. Anderson v. Brand* (1938) 303 U.S. 95, 1001, 82 L.Ed. 685, 691, 58 S.Ct. 443. See also *Larsen v. South Dakota* (1928) 278 U.S. 429, 433, 73 L.Ed. 441, 444, 49 S.Ct. 196; *Higginbotham v. Baton Rouge* (1938) 306 U.S. 535, 83 L.Ed. 968, 59 S.Ct. 705; *California Liquor Dealers v. Midcal Aluminum* (1980) 445 U.S. 97, 111, 63 L.Ed. 233, 247, 100 S.Ct. 937.

There is no substantial question involved with regard to the proper interpretation of the California Constitution and the implementing State legislation regarding Williamson Act contracts. As noted by the Court of Appeal opinion, the authorization for the Williamson Act and the contract in question was derived from Article XXVIII of the California Constitution in which the State Legislature was authorized to provide for assessment of open space land which was "enforceably restricted" on the basis of its restricted use rather than at fair market value. D. App. A-30, fn.5.

The California State Legislature then implemented this constitutional provision by adoption of the Williamson Act. Government Code Sections 51200-51295.

Every California case that has discussed the consideration for a Williamson Act contract refers to tax relief as being the bargained for consideration granted to property owners in exchange for the property owners agreeing to restrict the use of their property by contract to agricultural uses. No cases refer to zoning guarantees as a consideration to be granted to property owners in such a contract.

In *Schillenberger v. Board of Equalization,* (1983) 147 Cal.App.3d 510, 513, the Court stated the following:

> "In an effort to preserve agricultural land and discourage its unnecessary and premature conversion, the Legislature in 1965 enacted the Williamson Act. (Gov. Code Section 51200, et seq.) Under the Act, cities and counties are authorized to enter into annually renewable contracts with the owners of open space land. By such contracts, the landowner agrees to restrict his property to open space, agricultural or related uses for at least ten years; *in return, the local government agrees to reduce the assessed valuation of that land to reflect such restricted use through assessed value.* (Gov. Code Sections 51230, 51240, 51242, 51244.) Because the agricultural use value of land in California is typically lower than market value, the landowner can reduce property taxes by temporarily forfeiting development rights." (Emphasis added.)

In *County of Marin v. Assessment Appeals Board,* (1976) 64 Cal.App.3d 319, 328, the Court stated the following:

> "As expressed in the statute, the very purpose of the Williamson Act is to encourage the preservation of the maximum amount of agricultural land as open space (Sections 51220, 51222, 51223) and to allow the removal of restrictions only when the devotion of land for agricultural use is neither necessary nor desirable (Sections 51256, 51280). *At the same time, the landowner who commits his land to agricultural use for a certain period of time also benefits from the agreement by obtaining the contemplated tax benefit, the agreed upon consideration for the restrictions.*" (Emphasis added.)

In *Sierra Club v. City of Hayward,* (1981) 28 Cal.3d 840, 851, the California Supreme Court stated the following:

> "The (Williamson) act empowers local governments to establish 'agricultural preserves' consisting of lands devoted to agricultural uses and other uses compatible therewith. (*Id.* Section 51230) Upon establishment of such preserves, the locality may offer to owners of included agricultural land the opportunity to enter into annually renewable contracts that restrict the land to open space use for at least ten years. (*Id.* Sections 51240, 51242, 51244.) *In return, the landowner is guaranteed a relatively stable tax base,* founded on the value of the land for open space use only

> and unaffected by its development potential." (Emphasis added.)

In *Honey Springs Homeowners Association, Inc., et al. v. Board of Supervisors of San Diego County, et al.*, (1984) 157 Cal.App.3d 1122, 1130-1131, the Court stated the following:

> "Under the (Williamson) act local governments may, but are not required to, establish 'agricultural preserves' (Section 51230), i.e. areas devoted to either agricultural use, recreational use, open space use, or the combination of any such uses . . . by executing voluntary contracts with property owners restricting land use for an initial term of no less than ten years. The contracts are automatically renewed each year unless notice of nonrenewal is given pursuant to section 51245. (Section 51244). *By agreeing to restrict the use of land, the landowner receives a reduced property tax assessment based upon the value of the land for its current use rather than its market value.*" (Emphasis added.)

Moreover, this Court has recognized that relinquishment of government power should not be implied absent clear indication that the legislature so intended to bind itself contractually. As stated in *National Railroad Passenger Corporation v. Atchison, Topeka & Sante Fe Railway Company* (1985) 470 U.S. ___, 84 L.Ed.2d 432, 446, 106 S.Ct. ___; "indeed 'the continued existence of the government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation'."

Even assuming the contract granted appellant a right to the then existing zoning regulations during the term of the contract, a statute that alters contractual rights or obligations to a minimal degree does not result in a constitutional impairment of contract. *National Railroad Passenger Corporation v. Atchison, Topeka & Sante Fe Railway Company, supra,* 84 L.Ed.2d at 450. The adoption of regulations requiring discretionary reviews by governmental agencies does not in itself constitute any substantial impairment. *Penn Central Transportation Company v. New York City, supra.*

In addition, the Williamson Act contract entered into by appellants and appellee incorporated the express provisions of State law for a minimum term of ten years and subject to annual renewal only in the absence of a notice of termination from either party. Government Code Sections 51244 through 51246. Accordingly, even if the appellants expected to have contractual rights to the zoning regulations in effect at the time the contract was executed, those rights could only have been guaranteed for ten years. In fact, the contract was in existence for more than ten years at the time the Agricultural Preserve Zone regulations were revised in 1982 to require discretionary permits. Thus, any reasonable expectations which the appellants had at the time they executed the contract in 1971 were not infringed upon in any event.

## CONCLUSION

For all of the foregoing reasons, appellee County of Santa Cruz respectfully submits that this appeal should be dismissed, and that there are no reasons for granting review by certiorari.

Respectfully submitted,

DWIGHT L. HERR, County Counsel

*Attorney for Appellee*
County of Santa Cruz

# APPENDIX

# APPENDIX A

## PLANNING DEPARTMENT
## COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER 701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060

(408) 425-2194

Walter J. Monasch, AIP
PLANNING DIRECTOR

December 22, 1970

Dear Property Owner:

This is a reminder that three assessment stabilization programs are available to owners of agricultural and/or open space lands in Santa Cruz County. This notification is intended for all property owners of 5-acres or more. If you are interested in continuing agriculture as a major industry and in maintaining the scenic, open qualities that make this area attractive and healthful for the people in the county, you may wish to apply for coverage under the Land Conservation Act (Agricultural Preserve), the Statement of Intention program or an Open Space Easement.

**Agricultural Preserve**

The minimum size permitted for an agricultural preserve is 50-acres, except for grazing land which is 100-acres. Contiguous parcels under different ownership may be combined in order to meet the minimum size requirement; however, the minimum individual parcel size considered is 10-acres with the exception for grazing land which is 20-acres. After approval of an agricultural preserve, each property owner is asked to enter into a contract whereby he agrees to restrict the use of his property to agricultural uses for a period of ten years.

**Statement of Intention**

This program involves the issuance of a certificate by the Board of Supervisors to not rezone covered property

from the A-10 (Exclusive Agriculture) District within the foreseeable future. The minimum parcel size is 5-acres except for grazing land which is 20-acres. Since no preserve will be formed under this program properties may be submitted on an individual basis.

**Open Space Easement**

This program may be applied to scenic, open land, as well as agricultural land. However, it involves a contract by which the property owner retains the present open character of his land for a period of 20 years.

The Planning Department will review each application on the basis of specific criteria applied to each program and make its recommendation to the Planning Commission at a public hearing. The Planning Commission then forwards its recommendation to the Board of Supervisors for action.

For detailed information, please contact the Santa Cruz County Planning Department, 400 Governmental Center, 701 Ocean Street, Santa Cruz, CA 95060, or preferably call 425-2194. If calling from Watsonville dial 688-2033.

In the event that you are interested in applying in order to be eligible for tax relief in the 1971-72 fiscal year, applications should be completed and submitted to this office by December 31, 1970. Because of the late date in this notification consideration will be given to applications submitted during the first week in January, 1971.

Sincerely,

WALTER J. MONASCH, AIP
Planning Director

/s/ DENNIS PISILA
DENNIS PISILA, Senior Planner

**Proof of Publication**

**(2015.5 C.C.P.)**

STATE OF CALIFORNIA, SS.
COUNTY OF SANTA CRUZ.

FARMERS AND OWNERS OF SCENIC LANDS

I, the undersigned say;

That I am over the age of eighteen and not interested in the above entitled matter; that I am now, and at all times embraced in the publication herein mentioned was, the principal clerk of the printer of the Santa Cruz Sentinel, a daily newspaper printed, published and circulated in the said county and adjudged a newspaper of general circulation by the Superior Court of the County of Santa Cruz, State of California, under proceeding No. 25, 794; that the _____

FARMERS AND OWNERS
OF SCENIC LANDS

of which the annexed is a true printed copy, was published in the above-named newspaper on the following dates, to wit: October 15, 1970

---

FARMERS AND OWNERS OF SCENIC LANDS—

Seeking Assessment Stabilization?

**SANTA CRUZ COUNTY IS OFFERING THESE PROGRAMS:**

* **Land Conservation Act**
* **Agricultural Zoning**
* **Open Space Easement**

**Information call:**
COUNTY PLANNING DEPT.—425-2194
ASSESSOR'S OFFICE—425-2331
(FROM WATSONVILLE—688-2033)
AG. COMMISSION—724-1149

I Certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Santa Cruz, California, this 15th day of October, 1970

Signature /s/ MARTHA PARTESFIELD
MARTHA PARTESFIELD

Supreme Court, U.S.
FILED
AUG 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

(4)

No. 86-109

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
*Appellants,*

VS.

THE COUNTY OF SANTA CRUZ and
THE CALIFORNIA COASTAL COMMISSION,
*Appellees.*

## REPLY BRIEF OF APPELLANTS IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
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VS.

THE COUNTY OF SANTA CRUZ and
THE CALIFORNIA COASTAL COMMISSION,
*Appellees.*

## REPLY BRIEF OF APPELLANTS IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

NOW COME Appellants, ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI and as their Reply Brief in Opposition to the Motion to Dismiss or Affirm, hereby file the following Brief.

### I

### THE SUPREME COURT MUST REVIEW TWO CONCEPTIONALLY DIFFERENT QUESTIONS WITH RESPECT TO THE DECISION OF THE CALIFORNIA COURT OF APPEAL

The Supreme Court must review two conceptionally different questions with respect to the Decision of the Court of Appeal, namely—: (1) Is the Decision based upon a state ground that is independent and free of entanglement with the Federal question? (2) Even assuming, arguendo (which Appellants do not), that there is an independent state ground, is the state ground adequate

to support the decision of the Court of Appeal? *Michigan v. Long*, (1983) 463 U.S. 1032, 1043.

A. Initially, the Decision of the Court of Appeal is *not* based upon a state ground that is independent and free of entanglement with the Federal question. For example, under contract law in California, every contract has an implied covenant of good faith and fair dealing. *Brown v. Superior Court*, (1949) 34 C2d. 559, 564, 212 P2d. 878. Moreover, such contractual rights of good faith and fair dealing are protected by the United States Constitution. Article One, Section 10, United States Constitution; *Allied Structural Steel Co. v. Spannaus*, (1978) 438 U.S. 234, 241; *Estate of Thramm*, (1947) 80 CA 2d. 756, 765, 183 P2d. 97. Nonetheless, the majority Decision of the California Court of Appeal blithely ignores such constitutionally protected rights.

Further, even aside from the covenants of good faith and fair dealing, the Fifth Amendment, substantive Due Process, require a fundamental fairness. The Fifth Amendment expresses principle of fairness and not a technical rule procedure. *United v. Dickson*, (1947) 331 U.S. 745, 748. Here, the Decision of the California Court of Appeal blithely ignores such Federal rights and a state court cannot deprive a litigant of a federal right by omitting to pass upon the same. See *Brooklyns Saving Bank v. O'Neil*, (1945) 324 U.S. 697, 703; *Merchants' National Bank v. Richmond*, (1921) 256, U.S. 635, 638; *Carlson v. Washington*, (1914) 234 U.S. 103, 105.

B. Furthermore, even assuming, arguendo, there was any independent state of ground, which there is not, there is no "adequate" state ground to support the judgment. The state ground, to be adequate, must be real, tenable, and true and *not* arbitrary or a devise to prevent a review of the Decision upon the Federal question. *Enterprise Irrigation District v. Canal Co.*, (1917) 243 U.S. 157, 164; *Ward v. Love County*, (1920) 253 U.S. 17, 22; *Lawrence v. State Tax Commissioner*, (1932) 286 U.S. 276, 282; *Staub v. Baxley*, (1958) 355 U.S. 313, 320.

Here, the majority in the Decision of the California Court of Appeal is merely using unsupported, legal gibberish. See A-30 to A-33. There, there is reference to the contract. Nevertheless, the

Decision makes no logical or legal connection between the content, itself, and conclusions. The Decision is merely trying to create a so-called "state ground" in order to prevent a review of the Federal question by the United States Supreme Court. The reason for this obfsucation in California is well known. In California there has been a rapid erosion, if not elimination, of private rights of California citizens. *City of Venice v. Venice Peninsula Properties,* (1982) 31 Cal 3d 288, 316 (Dissenting opinion).

For example, this Land Conservation Act contract, drafted by the County, was signed by the landowners in February, 1981 and the Agricultural Preserves (A-P) zone is specifically a part of it. The contract specifically refers to the Agricultural Preserve (A-P) zone five different times and requires that the land be rezoned to Agricultural Preserve (A-P) zone, which it was. Furthermore, prior to the contract, the land use General Plan adopted by the County called for a relatively intense residential-golf course development of the subject property. After the contract was executed, the land, indeed, was rezoned to the Agricultural Preserve (A-P) zone district and the General Plan was amended whereby those land uses were eliminated. Failure by the court to protect the rights of the Delucchis would damage them in excess of $2,000,000.00. Appendix B, A 9-13 (See also RT pages 58-84-85). Moreover, prior entering into this contract, promises, representations and inducements were made to the Delucchis by the County officials that the then existing Agricultural Preserve (A-P) zone including the then permitted uses would not be changed and it would remain in same during the life of the agreement. A-10, A-39. the landowners, to their substantial detriment, reasonably and irreversibly relied upon such represents and inducements. A-10, A-39. Had such assurances, representations, and inducements not been made, the Delucchis would never have entered into this contract. A 9-10, A 15-16.

The feeble response of the majority in the Decision is that:

> "except for Clause 3, the contract speaks in terms of use restrictions either imposed by the County or agree to by Plaintiff owners. Only in Clause 3 is there any language which purports to bind the County, and this language, once

again, refers to uses, and not to the right of the County to regulate those uses." A-33.

Initially, especially since the County drafted the contract and was dealing directly with lay people, there is absolutely no distinction between "uses" as against "regulate" uses. Furthermore, Clause 3 is, indeed, part of the contract and it does, as admitted by the majority in the Decision, bind the County to the uses of the Agricultural Preserve (A-P) zone at that time.

Furthermore, the Decision, ignoring the contract itself, blithely ignores the clear language of the contract including provisions such as the following: (1) "... the within contract is made and entered into pursuant to the Land Conservation Act of 1965." Clause 3, A-44. (2) "... during the term of this contract, the above-described land shall be used for the commercial production of agricultural commodities and/or those compatible uses allowed in the Agricultural Preserve (A-P) Zone of the County zoning ordinance." Clause 2, A-44-45. (3) "... County agrees not to authorized any uses OTHER THAN THOSE PERMITTED BY THE COUNTY ZONING ORDINANCE IN THE AGRICULTURAL PRESERVE (A-P) ZONE.... Clause 3, A-45, (Emphasis added). In addition to the foregoing, there are other references to the Agricultural Preserve (A-P) zone. A-44-47. The majority in the Decision is merely attempting to obfuscate the violation of federal constitutional rights.

Moreover, after a two day trial, the trier of fact, the Superior Court, determined that:

A. "Most land owners would have significant reluctance to sign any long term contract, such as a Williamson Act (Land Conservation Act) Contract, unless he/she was assured that the land use regulations during the term of the contract would remain the same. Among other items, the landowner cannot weigh the various considerations in a Williamson Act (Land Conservation Act) Contract unless the zoning, zoning regulations, and text including the permitted uses thereunder remain the same and are known during the life of the proposed contract." Appendix B, A-14.

B. "The original contract between the County and the landowner provided and it was intended that there be the land uses as set forth in the Agricultural Preserve District regulation and text existent at the time of the contract as part of the contract. Among other items, to eliminate those land uses as a matter of right, constitutes a breach of the contract between county and landowner." Appendix B, A-16.

C. ". . . the Contract Clause of both the United States Constitution and the State Constitution is not a dead letter and it does impose limits upon the power of the Defendants to impair the existing contractual relationships between the County and the landowner . . . the contract are (is) not invalid as an unlawful delegation of the police power . . . the policy to preserve agricultural lands and encourage landowners to enter Williamson Act (Land Conservation Act) contracts outweighs the policy against contracting away police powers." Appendix B, A-14.

Furthermore, in the Decision, the concurring opinion, written by Judge Brauer, was more candid and clearly pointed out that the purported "state ground" (according to Appellees) is "beside the point". A-39. Justice Brauer pointed out that the unrefuted evidence shows that the Delucchis' were induced to enter into this agreement with the County based upon the County's representation that the then existing zone would remain in effect during the life of the agreement and that "such inducement may always be proved by parole evidence . . .". A-39. Justice Brauer went on to further state, "I would base the decision squarely on *Avco Community Developers, Inc. v. South Coast Regional Commission*, (1976), 17 Cal.3d 785, 800," which, in turn, states, according to the California Supreme Court, that ". . . it is settled that the government may not contract away its rights to exercise the police power in the future." IBID, 800. Yet, according to the United States Supreme Court, there *are* federal constitutional limits imposed by, inter alia, the Contract, Taking, and Due Process Clause of the federal constitution on the exercise of the police power. *Allied Structural Steel Co. v. Spannaus*, (1978) 438 U.S. 234, 241; *Energy Reserves Group v. Kansas Power and Light Co.*, (1983) 459 U.S. 400, 412; *Armstrong v. United States*, (1960) 364 U.S. 40.

Moreover, if the United States Supreme Court is to meet its constitutional responsibilities, it cannot permit itself to be "completely bound by state court determination of any issue essential to this decision of a claim of federal right, else federal law could be frustrated by distorted fact finding." *Stein v. New York*, (1953) 346 U.S. 156, 181. Also, this Court has the freedom to make independent fact determinations, whether the fact finding below be that of a state court or a state jury. Nothing precludes rejection of findings where federal constitutional rights are at stake and where those rights may depend upon the competency, legal affect, or sufficiency of the evidence submitted to the trier of fact, or the theory of the submission. See eg. *Creswill v. Knights of Pythias*, (1912) 225 U.S. 246, 262.

## II

## THE VIOLATION OF THE DELUCCHIS' FEDERAL CONSTITUTIONAL RIGHTS ARE PROPERLY BEFORE THIS COURT

As previously set forth, the Delucchis, based upon the inducements and representations of the County officials, irreversibly changed their position and entered into this contract. A-39. But for such inducements and representations by the County officials, the Delucchis would not have entered into this contract. A-9-10; A-15-16 (Also in RT pages 69, 27, and 47). At all times, the landowner asserted their Federal constitutional rights with Appellees. A-12.

The California Coastal Commission argues that the constitutional claims of "taking" are purportedly "premature" citing *MacDonald et al. v. Yolo County*, (1986) 54 U.S.L.W. 4782; *Agins v. City of Tiburon*, (1980) 447 U.S. 255. Nevertheless, neither case is dispositive or even applicable. Among other items, the cases cited by the California Coastal Commission did *not* involve specific representations and inducements by public officials; any irreversible change of position to the substantial detriment of the landowner; any written contracts between the public agency and the landowner; and an agricultural preserve zone part of a written contract.

Appellee totally ignores the contract between the landowner and public agency as though it did not exist. Nevertheless, both the United States Constitution and this Court have not. *Allied Structural Steel Co. v. Spannaus*, (1978) Supra; *Energy Reserves Group v. Kansas Power and Light Co.*, (1983) Supra; Article I, Section 10, United States Constitution.

In addition to the foregoing, the Taking Clause protects intangible assets such as rights secured by contract and the contract, itself, and the same cannot be taken without the payment of just compensation. *Lynch v. Household Finance Corp.*, (1972) 405 U.S. 538, 552; *Armstrong v. U.S.*, (1960) 364 U.S. 40; *City of Oakland v. Oakland Raiders*, (1982) 32 Cal.3d 60, 69 (franchise rights); *Liggett and Meyers v. U.S.*, (1927) 274 U.S. 215, 220 (contract to provide tobacco products); *Porter v. U.S.*, (5th Cir. 1973) 473 F.2d 1329 1333-1335 (right to exploit collector's value); *City of North Sacramento v. Citizens Utilities Co.*, (1961) 192 Cal.App.2d 482 (contract right to do business.) The Delucchis and this Land Conservation Act contract are protected by the Taking Clause as well as other provisions of the Federal constitution.

The Delucchis have always asserted their constitutional rights throughout this process. A-12. This is ripe for adjudication. A-17.

In addition, initially the uses permitted as a matter of right in the Agricultural Preserve Zone District regulation in effect at the time of the execution of this contract were much more expansive and great in number than the comparatively few permitted uses in the present AP regulation of the County. A-15.

Furthermore, even if the County's present Agricultural Preserve Zone District regulations allowed an application to be filed for the same uses that were allowed as a matter of right without any application in the Agricultural Preserve Zone District regulations in effect when this Williamson Act Contract was executed, no reasonable comparison between the two can be made. Among other items, a permitted use as a matter of right is a right of the landowner and *not* discretionary with the public agency. A-16.

Also, a "discretionary permit approval" can impose conditions and restrictions that otherwise could not be imposed on a use

permitted as a matter of right. Further, the County's present Agricultural Preserve Zone District regulations, even assuming that a "discretionary permit approval" had been obtained, are more restrictive in some instances than the uses permitted as a matter of right to the landowner in the Agricultural Preserve Zone District regulations in effect when the Williamson Act Contract was executed. A-16.

Moreover, if a use is permitted as a matter of right under the Agricultural Preserve Zone District in effect when the Williamson Act Contract was executed, the landowner could proceed with that permitted use in a prompt manner at his choosing. Nevertheless, no use is a use at all if a discretionary permit approval application is required. The application process is not only time consuming involving expense to the landowner, but it is, obviously, discretionary with County as to any approval. A-16.

The Appellees are merely using their own wrongful acts in an attempt to "bootstrap" themselves out of the contract and, further, eliminate the constitutional rights of the Delucchis. The Appellees cannot take advantage of their own wrong. Section 3517 of the Civil Code.

There are neither "administrative remedies" existent nor any need, had they been existent, to pursue the same. Appellants sued under, inter alia, the Federal Civil Act and under that Act, there is no requirement that there be any exhaustion of so-called state administrative remedies. *Patsy v. Regents of the State of Florida,* (1982) 457 U.S. 496, 102 S.Ct. 2557.

## CONCLUSION

The Motion to Dismiss or Affirm of Appellee should be denied. The issues presented herein are critical and this Court's guidance, direction, and protection are needed not only by the Appellants but also by the farmers/landowners of California and other agriculture states. Delucchis pray that probable jurisdiction be noted or that this Court grant the Petition for Writ of Certiorari pursuant to 28 U.S.C. Section 2103 and Rules of this Court, 17.1(a), (b) and (c).

ADAMS, LEVIN, KEHOE,
BOSSO, SACHS & BATES,
A Professional Corporation

By: DENNIS J. KEHOE
*Attorney for Appellants,*
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Supreme Court, U.S.
FILED
SEP 23 1986
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CLERK

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## REPLY BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF THE COUNTY OF SANTA CRUZ TO DISMISS OR AFFIRM AND TO DENY THE APPLICATION FOR WRIT OF CERTIORARI

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# United States

OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
*Appellants,*

VS.

THE COUNTY OF SANTA CRUZ and
THE CALIFORNIA COASTAL COMMISSION,
*Appellees.*

**REPLY BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF THE COUNTY OF SANTA CRUZ TO DISMISS OR AFFIRM AND TO DENY THE APPLICATION FOR WRIT OF CERTIORARI**

NOW COME Appellants, Andrew Delucchi and Dorothy G. S. Delucchi and they hereby file a Reply Brief In Opposition to the Motion To Dismiss Or Affirm Or to Deny the Application for Writ of Certiorari filed by the County of Santa Cruz. Earlier, the California Coastal Commission, Appellee, filed a similar Motion, to which the Appellants have already filed a Reply Brief In Opposition. This Court is referred to the earlier Reply Brief, also.

## I

## THERE ARE SUBSTANTIAL FEDERAL QUESTIONS AND THERE ARE SPECIAL IMPORTANT REASONS FOR A REVIEW OF THIS MATTER

The County of Santa Cruz, referred herein to as County, makes various assertions and arguments, all of which are erroneous. There are substantial federal questions and, further, there are special and important reasons why this Court should review this matter.

Generally, the self-serving arguments of the County are: (1) the *only* alleged consideration to the farmer in entering the contract was potential tax reduction and agricultural land uses were irrelevant, although the unrefuted evidence is to the contrary; (2) notwithstanding the fact that many of the permitted land uses and discretionary land uses have been completely eliminated by the recent, substantial changes in the Agricultural Preserve Zone, according to the County there are mythical administrative processes; and (3) the Land Conservation Act contract of this farmer is merely a parochial matter, notwithstanding the enabling state legislation, statements of the trier of fact to the contrary, and the contrary statement of the California Farm Bureau. All of the County's arguments are inaccurate and not dispositive. Probable jurisdiction should be noted or, under the Writ process, the Writ granted.

**1. The Represented And Assured Land Uses Under The Then Agricultural Preserve Zone Were Not Only Inducement To Enter The Contract But Were The Primary Contractual Consideration To The Farmer**

For approximately three years prior to the entry of this Land Conservation Act contract with the County, Delucchis had many meetings with County officials including the County Planning Director and Assessor. Appendix A, A 4-7; A 9-10; R.T. 23-29, 42. Although the tax phase was gone into by the Delucchis with the County officials, the most important aspect to the Delucchis and that which was a primary bargained for consideration was the land uses. Appendix A 4-10; R.T. 23-29, 42-47 and 69. There were specific discussions with the County officials wherein the Delucchis were assured and promised, should they enter into this contract, they could use their land, as a matter of right, for, inter alia, family homes and greenhouses as a part of the contract and, further, the then Agricultural Preserve (A-P) Zone, including the land uses permitted as a matter of right thereunder, would remain unchanged during the life of the contract. A-10; R.T. 23-29 and 47. The Delucchis, to their substantial detriment, reasonably and irreversibly relied upon these promises, inducements and representations so as to change their position and enter into this contract with the County. A 9-16; R.T. 27, 47, and 69. Had these assurances, inducements and representations not been made to the Delucchis on behalf of the County, the farmer would never have entered into this contract. A 9-10; A 15-16; R.T. 27, 29, 48. Moreover, had the assured land uses merely been "*possible*" land uses because of a requirement to apply for a discretionary permit, the Delucchis would never have entered into this contract. A 9-10; R.T. 27-29.

The contract was drafted by the County and, thereafter, signed by Delucchis in February, 1971.[1] A-44. The contract specifically refers to the Agricultural Preserve (A-P) Zone District five times and required that the land be rezoned to the A-P Zone, which it

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[1] In the Reply Brief to the Coastal Commission Motion To Dismiss, the date was erroneously referred to as "1981"; nevertheless, the date is February, 1971. See page 3 of the Reply Brief of Delucchi.

was. Furthermore, prior to this contract, the land use General Plan adopted by the County for this land called for a relatively intense residential-golf course development of the subject property. After the contract was executed, the land was rezoned to the A-P Zone and the General Plan was amended whereby those land uses were eliminated, totally. A-13; R.T. 84-85. Failure to protect the constitutional rights of the Delucchis damaged them in excess of $2,000,000.00. A 9-13; R.T. 58, 84-85. Thus, it is clear that the guaranteed and promised land uses were, unrefutably, a primary consideration and that which was bargained for by the landowner prior to entering into this contract with the County. The erroneous assertions of the County that the potential tax reduction was the *only* consideration just have no basis.

The cases cited by the County are not dispositive in that, inter alia, none of the cases state that the "only" consideration to the farmer is a potential reduction in taxes. Furthermore, the County is bound by its own restrictions in the form of the contract and the A-P Zone including the permitted uses at the time of the contract. Otherwise, the County could unilaterally change the contract, which is not only contrary to contract law, but also is contrary to the Land Conservation Act itself. Sections 51253 and 51254 of the California Government Code; Jurisdictional Statement page 6; *Lewis v. City of Hayward,* (1986) 177 C.A. 3d 103; 222 Cal. Rptr. 781, 783.

Furthermore, as a matter of common sense, no farmer in his right mind would enter into a long term agricultural contract of this nature without wanting assurances that the agricultural land uses potentially suitable for that land are guaranteed. This is *not* a mere zoning or land use case. A farmer is in the agriculture industry, which industry is essential to the Nation. Further, the Land Conservation Act defines "agricultural use" in expansive language, i.e. "the use of land for the purpose of producing an agricultural commodity for commercial purposes" and " 'agricultural commodity' means any and all plant and animal products produced in this state for commercial purposes." *Section 51201 (a) (b) of the California Government Code.* The A-P Zone existant at the time of the inception of this contract and incorporated into it mirrors the state legislation (then and now) by

authorizing, as a matter of right, "*all* agricultural uses" as permitted uses except for the few listed discretionary use such as hog farms. A 19-22. The counter argument of the County is that if any agricultural land use is allowed the impairment is inconsequential. The County's argument is specious. For example, tree orchards are an agricultural land use but not economically feasible on many lands, including this property, in the United States. The agricultural land uses must be matched with the nature of the agricultural land, and the then prevalent market conditions and every farmer knows this. The County, self servingly, has blithely ignored these facts.

In another feeble argument, the County attempts to assert that the consideration bargained for of agriculture uses, as a matter of right, lasted only ten years. See County Motion To Dismiss, page 13. Again, the County's argument is specious. As it well knows, the life of the contract including that which is bargained for lasts ten years *beyond* a notice of termination. Government Code Section 51244. No such notice has been given and the bargained for consideration lasts throughout the life of the contract. Furthermore, the inducement by the County to Delucchis to enter into this contract lasts far beyond the contract in that, inter alia, the land use General Plan specifically authorizing an intense residential golf course development was eliminated and the property was rezoned to the A-P Zone as called for by this contract. A 9-13; R.T. 84-85.

**2. The Mythical Administrative Remedies Asserted By The County Miss The Mark**

Initially, the County argues, erroneously, that the case of *Penn Central Transportation Co. v. New York City*, (1978) 438 U.S. 1104, 57 L. Ed.2d 631, 98 S. Ct. 2646 deals with a contract between a public agency and a landowner and that, according to the County, the elimination of rights in a government contract by making the same discretionary with that contracting agency is constitutionally permissible. See County Motion To Dismiss, page 13. Penn Central is not dispositive in that, inter alia, the Court was not reviewing a contract authorized by state statute between the public agency, itself, and the landowner. Again, the County has missed the mark. As pointed out in the Jurisdictional

Statement, there has been a substantial impairment, contrary to the federal constitution. Jurisdictional Statement pages 12-14. Moreover, as this Court has stated, there is a strict standard that applied against a public agency when the contract in question is etween the public agency and the landowner. *Energy Reserves Group v. Kansas Power And Light Co.,* (1983) 459 U.S. 400, 412, 103 S. Ct. 697.

The County totally ignores the fact that there is, indeed, a contract between the public agency and the farmer. Rather, the County treats this as a mere "down zoning case", which it is not.

Furthermore, the County cites the case of *National Railroad Passenger Corporation v. Atchison, Topeka and Santa Fe Railway Co.,* (1985) 470 U.S. ____, 106 S. Ct. 1441. See County's Motion To Dismiss, pages 12 and 13. In that case, this Court was concerned as to whether there was even a contract between the public agency, the United States, and the private companies. Nevertheless, in this case, pursuant to state authorization there is, indeed, a written contract between the public agency and the farmer. A 44-47. Furthermore, the contract, itself, repeatedly refers to the then Agricultural (A-P) Zone; that the subject property must be rezoned to the then A-P Zone; and that, inter alia, the County agrees to authorize uses permitted by the County Zoning Ordinance in the Agricultural (A-P) Zone as it existed at the time of the contract. See A 44-47 including clause 3 at A-45. If anything, the cases cited by the County, including the National Railroad Passenger Corporation case, support the position of Appellants in that the same clearly acknowledge a public agency is empowered to enter into contracts and that the contracts are enforceable under a strict standard of review as against the public agency. *National Railroad Passenger v. Atchison, Topeka and Santa Fe Railway Co.,* (1985) 105 S. Ct. 1441, 1452; *Energy Reserves Group v. Kansas Power And Light,* (1983) Supra.

Next, in desperation, the County is now waiving the mythical flag of purported administrative remedies. County has, again, missed the point. The guaranties are enforceable under the Constitution as well as by contract, all of which arose prior to 1972. For example, included within the contract was the Agricultural Preserve Zone District. Furthermore, there were induce-

ments and assurances that there would be no modification of those regulations during the life of the contract. R.T. 22-29, 42-49, 87. The then Agricultural Preserve Zone District provided landowners with many permitted uses, as a matter of right, without seeking a discretionary permit, including but not limited to family homes and almost all agricultural uses including greenhouses. A 19-24; A 13. Furthermore, the state legislature specifically provided that contracts such as this are enforceable by the landowner. *Section 51251 of the Government Code.* Although there was no administrative remedy nor is there now, assuming arguendo that one existed, no exhaustion is required since there is a right to bring this matter into court as provided by statute. *City of Susanville v. Hess,* (1955) 45 C.2d 684, 689. Moreover, this case was also brought under the federal Civil Rights Act and this Court has ruled that there is no requirement of exhaustion of so called state administrative remedies. *Patsy Regents Of The State Of Florida,* (1982) 457 U.S. 496, 102 S. Ct. 255.

Even aside from the above, the uses permitted, as a matter of right, in the Agricultural Preserve Zone District regulation in effect at the time of the execution of this contract were much more expansive and greater in number than the comparatively few permitted uses in the present A-P Zone regulation of the County. A-15. Furthermore, even if the County's present Agricultural Preserve Zone District regulations allowed an application to be filed for the same uses that were allowed, as a matter of right without any application, in the initial A-P Zone District in effect at the time of this contract, no reasonable comparison between the two can be made. Among other items, a permitted use, as a matter of right, is a right of a landowner and NOT discretionary with the public agency. A-16. Also, a "discretionary permit approval" can impose conditions and restrictions that otherwise could not be imposed on a use permitted as a matter of right. Further, the County's present Agricultural Preserve Zone District Regulations, even assuming that a "discretionary permit approval" had been obtained, are more restrictive than the uses permitted, as a matter of right, to landowner in the Agricultural Preserve Zone District regulations in effect when this Land Conservation Act was executed. A-16. Moreover, prior to the execution of the contract between the farmer and the agency, had

the assured land uses permitted as a matter of right, merely been "possible" because of a requirement to apply for a discretionary permit, the Delucchis would never have entered into this contract. A 9-10; A 15-16; R.T. 27, 47, 69.[2] Clearly, that which was bargained for by the landowner has not only been substantially impaired but eliminated. This is particularly highlighted by the

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[2] County mistakenly argues that, since a Mr. Antonelli in 1980 applied for a permit to construct greenhouses, in some manner the constitutional rights of the Delucchis have vanished. County Motion To Dismiss, pages 4-5.

Initially, the Delucchis have always been on record that greenhouses have been permitted as a matter of right and, further, the County Ordinance specifically states that "all agricultural uses" are permitted as a matter of right under the A-P Zone existent at the time of inception of this contract, except for those listed as conditional uses. A-19. Greenhouses, an agricultural use, are *not* listed as a conditional use and, therefore, were permitted as a matter of right under the, then, A-P Zone. A 19-20. Third, before, during and subsequent to the Antonelli permit, Delucchis have always been on record that greenhouses are a permitted use and no waiver of their rights has been made. Trial Exhibit 1, R.T. 51; Appendix 3. Fourth, as admitted by the County, Mr. Antonelli did not accept nor exercise a permit because the multiple conditions were burdensome and, therefore, the County has highlighted, clearly, that there is a significant and substantial impairment. Also, what the County says in 1980, or for that matter, 1986 is totally irrelevant in view of the inducements, representations and substantial change in position that occurred in 1971.

Next, the County slights the Delucchis for obtaining permits for two family homes on the property of 163 acres. Nevertheless the County carefully omits to point out that the repeal of the text of the original Agricultural Preserve Zone District (A-P) regulations, that existed at the time of the inception of the contract, did *not* become effective law until *after* the last application was filed and issued. C.T. 177-178. Further, as the records bear out at the time of the second application, the Coastal Commission staff report for the second application notes that the then *proposed* Local Coastal Plan (LCP) would require a use permit for the second unit; however, since the original A-P Zone existed at that time, no permit was required. R.T. 177-178 (Staff Report 10-21-82). Now, this has all been dramatically changed and *no* homes, as a matter of right, are permitted on this property.

fact that, shortly after the execution of the contract, the property was rezoned to A-P and the then land use General Plan calling for residential—golf course development at that time was amended to agricultural, all to the substantial detriment to the landowner. A-13. Had the landowner been told, prior to the contract, that a discretionary permit would have to be sought and obtained for family homes and greenhouses, the Delucchis would never have changed their position and would never have entered this contract. R.T. 28-29; A 15-16.

### 3. There Are Special And Important Reasons For Reviewing This Matter

County, whimsically, argues that, because there are only approximately four contracts in its jurisdiction of this exact nature, this has no significant impact. Yet, the County ignores the obvious. There are many Land Conservation Acts contracts throughout the state and the Decision of State Appellate Court severely impacts such contracts and the agriculture industry in general. A 14; A 42-43. The County has ignored the fact that the agricultural industry is of nationwide significance. Section 51220 (a) of the California Government Code. The County has ignored the fact that the California Farm Bureau Federation, representing 100,000 member farm families in 56 counties in California has clearly pointed out that this case "... will have an impact on present and future Williamson Act Contracts throughout the State of California." A 42-43. The County has blithely ignored the determination of the trier of fact, the Superior Court, pointing out that:

> "Most landowners would have significant reluctance to sign any long term contract, such as a Williamson Act Contract, unless he/she was assured that the land use regulations during the term of the contract would remain the same. Among other items, the landowner cannot weigh the various considerations in a Williamson Act Contract unless the zoning, zoning regulations, and text including the permitted uses thereunder remain the same and are known during the life of the proposed contract." A-14.

Clearly, there are special and important reasons for reviewing this matter.

## II

## CONCLUSION

The Motion of the County should be denied. The issues presented herein are critical and this Court's guidance, direction, and protection are needed not only by Appellants but also by the farmers/landowners of California and other agriculture states. Delucchis pray that probable jurisdiction be noted or that this Court grant the Petition for Writ of Certiorari pursuant to 28 U.S.C. Section 2103 and Rules of this Court, 17.1 (a), (b) and (c).

Dated: September 18, 1986.

Respectfully submitted,

DENNIS J. KEHOE